







**THE  
ADVOCATE.**





# THE ADVOCATE,



HIS

TRAINING, PRACTICE, RIGHTS,

AND

DUTIES.

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BARRISTER-AT-LAW.

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TO

THE RIGHT HONOURABLE LORD DENMAN,

MY LORD,

Having received your Lordship's permission to dedicate to you a volume upon a subject which, through a career so long and honourable, you have exalted by your precepts and illustrated by your example, I now submit to you this first attempt to exhibit, in the form of a treatise, a practical sketch of the training, practice, rights and duties of the British Advocate.

In the performance of this task I have sought to set up the high standard of acquirement and of conduct that has made the Bar of England, for so many centuries, the nursery of its noblest and truest

gentlemen—the school of its statesmen—and the profession of those patriots to whose courage, independence and honesty the liberties of the land have been more than once indebted for their salvation.

I may say in perfect sincerity, and with no purpose of flattery, that it was your Lordship who suggested to me the subject of this treatise. I had been accustomed to contemplate you at the Bar as the *ideal* of an Advocate: afterwards, I looked up to you upon the Bench with veneration, as the very model of that most honourable and honoured of dignitaries—the Lord Chief Justice of England. Reflecting upon the qualities that had thus commanded my admiration, I sought the sources of them, and what were the natural and acquired qualifications for an accomplished Advocate. I could find no book that supplied the information I was seeking, and setting down some notes of what I had observed, I was tempted to enlarge and systematize them, and, ultimately, to design the formal treatise, the first portion of which I now, with permission, dedicate to your Lordship.

The time at which I do so is of such serious

interest to the Profession, for which, I believe, your Lordship still feels the attachment of a life devoted to its service, that I cannot refrain from inviting your attention, in a few words, to its position and prospects.

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My Lord, I much fear that the glory of the Bar of England has departed, that its sun has set, and that it is doomed to destruction, or to a change of character and position that will be more lamentable than destruction. The recent revolution in the manner of administering justice, by substituting local tribunals for the great central fountains of law in Westminster Hall, combined with the simplifications of procedure that annihilate all those minor fees by which the Juniors of the Bar have been supported hitherto through the inevitable period of probation, will so reduce the amount of employment for Barristers, that their numbers—already too great—will be more than ever disproportioned to the business, and hundreds, nay thousands, must go out of the Profession, or be starved out, before demand and supply can be equalized, and there will be a prospect of even a moderate provision for a few.

It is not surprising that they who find themselves thus suddenly deprived of present subsistence and of all hope of future advancement in a Profession to which they have devoted so much labour and money, should receive with something like approval almost any plans proposed for snatching their long-cherished hopes and ambitions from threatened destruction. To this instinctive effort of the sinking to grasp at straws, we are probably indebted for the welcome so unwisely given by a considerable number of the members of the Junior Bar to a suggestion that they should rescind the rule of the Profession that forbids Counsel to accept a brief, or advise a Client, except through the intervention of an Attorney. This rule was, doubtless, recommended by experience; it has been found in practice to conduce to the well-being of *both* branches of the Profession, and to the advantage of the Client. I am sure that I need not recapitulate to your Lordship the benefits of this arrangement for the distribution of legal business, or the many mischiefs that would flow from its repeal. If it be desirable to preserve the distinction between the functions of Advocate and Attorney, as few, I presume, would seriously doubt, it is necessary that some *distinct* and unques-

tionable line should be drawn, which, being recognised by the whole Profession, should constitute the boundary between those functions. Once permit that boundary to be overpassed, and there will be no limit to invasion. If it be left to each practitioner's individual sense of propriety to determine what is within his province and what is not, interest will assuredly so blind some, and a keen sense of rivalry influence others, that they will be tempted to commit, even in all honesty and with good intentions, what to calm onlookers would appear to be a serious trespass upon the most lenient interpretation of the laws of professional conduct. Especially will this danger arise now that, in all probability, the Bar will cease to congregate in Westminster Hall and to take their tone from the highest of that assembly—to be inspired, as the dullest were, by such dignity as was shown by your Lordship—by such lofty-mindedness as is displayed by so many of the present Judges—by the spirit, and bearing, and language of the accomplished gentleman exhibited, as a standard for juniors to shape themselves by, in Counsel of the class of which I may designate Sir Frederick Thesiger as the type. Removed from the locality in which the mind and manners of the



man, the spirit and the tone of the gentleman, are continually being refreshed by living examples and by the very atmosphere of the society among which they move, transferred to a provincial town, subjected to its rivalries, its jealousies, its littlenesses, there is, my Lord, the most imminent danger lest the Bar in the Provinces should, after a time, lose much of the lofty character of the Bar at Westminster. This will certainly be the result if they should be tempted, by an excess of anxiety to compete with the Attorneys for the business of the County Courts, to rescind the rule that forbids them to take instructions and briefs directly from clients; for thus they will come, in no long time, to do the duties of Attorneys, and a ruinous rivalry will be established between the two branches of the Profession, who, in their *proper* duties and capacities, are *not* rivals, nor have *any* occasion for rivalry or jealousy, but only are two limbs of one body—two parts of one great whole.

The dangers that threaten to the Bar from its impending *de-centralisation*, so far from encouraging a relaxation of the rules of professional etiquette hitherto recognised, should but enforce their more

stringent observance. The greater the temptation to trespass against them, the more zealously, and rigidly should they be preserved. If requisite to sustain the character of the Bar assembled at Westminster, ten times more necessary will they be to uphold the status of the Bar scattered all over England, from Yorkshire to Cornwall.

I trust, therefore, that, if it should come to be a question whether the *rule* as to taking briefs in the County Courts should be rescinded, your Lordship's influential voice will be lifted up against it.

Many entertain sanguine expectations that the reforms now in progress in the Courts of Law will restore much of the lost business and even increase it. I cannot share this hope. The attractions of the County Courts to suitors who have disputes to *try* are such as no reforms in the Superior Courts could rival. The rapidity with which trials can be heard, the convenience of a hearing on the very day appointed, without the cost and trouble of conveyance of witnesses to a distant place, the satisfaction of knowing that, when a case is tried, it is settled and cannot be disturbed again and again—sources of

*vexation* to suitors in the Superior Courts, which more trouble them even than the bill of costs that tells them that justice can be too dearly purchased—these are tangible benefits which suitors will not readily resign. Improve the Common Law Courts as we may, they will never compete successfully with the County Courts in *these* particulars, and, therefore, I entertain but faint hopes of any large revival of business in them; and certainly I despair of such as will compensate for the fees of the Bar that are swept away by the recent statute, and by which the Juniors subsisted, or were much assisted to subsist, while acquiring the experience necessary for leadership. If Juniors cannot now live by the Bar, whence are to come our future Leaders—whence our Judges?

Such are the prospects of the Bar, as they present themselves to me, and I am unable to discover any way of escape. Nevertheless, whatever the fate of the Profession, I trust that no endeavour will be made to avert it by assenting to aught that will lower its status, or confuse its functions with those of the Attorney. Far better it should cease to exist as a Profession, than that it should survive its ancient honour, its influence, its respect, and its

public estimation. If we must fall, let us fall with dignity.

If I have been successful in sustaining, through these pages, the character of the Advocate, as we have seen it exemplified in your Lordship, and thus done something to avert the dangers to be feared from the changes now in progress, I shall be more than rewarded for the labour of the enterprise, to the prosecution of which I am encouraged by the approval with which you have honoured this first portion of the endeavour of,

My Lord,

Your Lordship's very faithful servant,

EDWARD W. COX.

3, CROWN OFFICE ROW, TEMPLE,

21st *July*, 1852.





## CONTENTS.

I. Introduction	...	...	...	...	page	1
II. Capacities	...	...	...	...	...	5
III. Natural Qualifications	...	...	...	...	...	8
IV. Physical Qualifications	...	...	...	...	...	11
V. Mental Qualifications	...	...	...	...	...	14
VI. Pecuniary Resources	...	...	...	...	...	27
VII. Will and Courage	...	...	...	...	...	43
VIII. The Training of the Advocate	..	...	...	...	...	48
IX. Moral Training	...	...	...	...	...	51
X. Practieal Morals	...	...	...	...	...	59
XI. Intellectual Training	...	...	...	...	...	76
XII. How to Study	...	...	...	...	...	80
XIII. How to Read	...	...	...	...	...	86
XIV. What to Read	...	...	...	...	...	92
XV. Studies for Information	...	...	...	...	...	94
XVI. Studies that Educate	...	...	...	...	...	103
XVII. Professional Studies	...	...	...	...	...	131
XVIII. Physical Training	...	...	...	...	...	163
XIX. The Art of Speaking	...	...	...	...	...	173
XX. Practice in Chambers	...	...	...	...	...	201

XXI. The Inns of Court	...	...	...	<i>page</i>	209
XXII. Student Life in the Temple	...	...	...		216
XXIII. The Call	...	...	...		246
XXIV. Reflection	...	...	...		255
XXV. Choice of a Circuit	...	...	...		262
XXVI. The Circuit	...	...	...		270
XXVII. Practice in Chambers	...	...	...		294
XXVIII. Cases for Opinion	...	...	...		302
XXIX. Advising on Evidence	...	...	...		311
XXX. Reading a Brief	...	...	...		321
XXXI. Consultations	...	...	...		328
XXXII. The Practice of the Courts	...	...	...		333
XXXIII. The Examination-in-Chief	...	...	...		351
XXXIV. Cross-Examination	...	...	...		375
XXXV. Re-examination	...	...	...		435
XXXVI. The Defence	...	...	...		442
XXXVII. The Reply	...	...	...		465

# THE ADVOCATE:

## HIS TRAINING, PRACTICE, RIGHTS, AND DUTIES.

### I.

#### INTRODUCTION

THE term ADVOCATE is here intended to apply to him who undertakes to plead *virâ voce* the cause of any suitor before any of the legal tribunals of this country, whether he be, as is the Barrister, exclusively the Advocate, or whether the duties of the Attorney be connected with those of advocacy. Nor will it be necessary for the purpose of these papers to make any distinction. Whatever instructions apply to the one will be applicable also to the other, and there is no difference in their rights or

ies.

Without raising, at this stage, a discussion as to the propriety or otherwise of a severance of the duties of the Advocate from those of the Attorney,



it will be sufficient for the immediate purpose to state, as a fact, that such a distinction exists in *practice* in all civilized communities; for even in America, although the law permits the Attorney to appear as an Advocate, the privilege is rarely used in courts which are of sufficient importance to be attended by a body of Advocates by profession. The division of labour is found to be as advantageous in this as in other employs. The foolishness of conducting one's own case has passed into a familiar proverb; and the same objection, for the same reasons, extends to the Attorney, who usually feels as much interest in the cause as does his client, is as apt to receive the same bias from his intimacy with all the facts, and therefore to forget whether they be strictly evidence or not. But obviously that distinction cannot be extended to all the tribunals of a country, and therefore everywhere is the Attorney required to discharge the duties of Advocate before tribunals whose jurisdiction is not sufficiently important to insure the attendance of those who are Advocates only.

But the principle is found to prevail to a great extent even in such tribunals. So peculiar are the qualifications required in the Advocate that, in the smallest matter that can be brought before the humblest Court, the Attorney unaccustomed to the practice usually engages the service of some other Attorney more skilled than himself in the duties of the office and accustomed to play there the part of Advocate. Every County Court has its Bar, by whom the greater portion of the business is con-

ducted for those who are the actual Attorneys in the cause—only that there the Bar is composed of Attorneys and not of Barristers.

Why it is so, and ever must be so, will be sufficiently apparent, when the reader learns how many are the qualifications requisite to the Advocate.

It is necessary, also, to observe, that the term “Advocate” will here be used in its widest sense, as applying to *all* who plead the causes of others in courts of justice, whether they are of the class to which the title is usually applied, whose special business it is to deal with *facts*, either to elicit them from the witnesses, or to present them with a commentary to the Court or the Jury, or whether they are of that more numerous class who are peculiarly qualified to deal with questions of law. In common parlance, and perhaps in strictness of definition, the former only is designated by the title of Advocate; but in this work both will be intended by the term, and in proper place will be described the difference in the qualifications requisite to each, so that the student may be enabled to form some judgment for which department he is by nature and education best fitted, that he may direct his thoughts and studies accordingly.

Undoubtedly the distinction is one which the members of the Bar are very loth to admit. It wounds our vanity to know that there is no hope of our becoming great both as an Advocate and as a Lawyer. If a man has a decided talent for advocacy, he will not readily admit that he is less profound a Lawyer than his friend in the adjoining

chambers, who can cite cases by the hour, and argue a demurrer till the Judges are "in wandering mazes lost," and who, in his turn, would be extremely wrath were he told that, although so learned a Lawyer, he cannot hope to be great as an Advocate. Yet would no effort of theirs make it otherwise. Nature forbids. The two callings demand not merely *different*, but *opposite*, faculties, which cannot co-exist in the same mind.

In truth, the practical sagacity of our clients has already decided otherwise, and we must bow to the decision, even if we question its righteousness. They who have briefs to bestow do not look for the combination in one mind of conflicting qualifications. They do not expect to retain with one fee the rapidity of thought, the promptitude of decision, the large knowledge of the world required in the Advocate, and the slow judgment, patient study of the books, and of the cases, and of the statutes needed for the getting up of the law of their case. The Attorney who consults the real interests of his client seeks *first* a skilful, intelligent and eloquent Advocate, to conduct his cause and deal with its *facts*, and *then* he consorts with him a junior, whom Nature and hard chamber study have qualified to work up *the law*; and thus, each supplying what the other wants, he finds his cause conducted in the most perfect manner.

## II.

### CAPACITIES.

THE duties of an Advocate demand a larger range of intelligence, a combination of a greater number of qualifications, than do those of any other branch of oratory.

The preacher needs little knowledge save that of the one great subject he is ordained to teach. All beyond this is ornamental, and not essential. He may be a giant in the pulpit, and a pigmy everywhere besides.

The *Senator* is not *necessarily* a man of wide range of information, of judgment correct and rapid, and competent to persuade or to convince. He may devote himself to one branch of politics, or be great on one question, or he may obtain a hearing on account of his acquaintance with some single topic to which he brings the wisdom of experience.

But the Advocate cannot thus be wise on one subject alone. His intellect must not be cultivated

in parts. His information must be universal as the range of human inquiry. His intelligence must have no limits but those of the human mind. All learning of the past that is contained in books, and of the present as it moves before his eyes, the philosophy of the study and the business of actual life, must be familiar to him—not, indeed, with the perfect mastery of a professor, for that is as unnecessary as impossible, but with such general knowledge of the facts of science and art, and of the processes by which they are pursued, as may enable him to deal with them as matters not foreign to his thoughts, and to talk of them in such manner as may be easily intelligible to the unlearned, and yet shall not subject him to the ridicule of the scientific. He needs equally large learning and vigorous common sense; imagination to give a glow to eloquence; strong emotions wherewithal to persuade, and power of argument by which to convince. For his duties are wide and various as are these qualifications. To-day he addresses Parliament on the complicated facts of a peerage case;—to-morrow he appeals to a jury for damages for an injury done to character. One hour he defends a criminal charged with an offence that involves nice questions of physiology or chemistry; the next he is required to handle disputed mercantile accounts,—or an architect's estimates for a building,—or the infraction of a patent for machinery,—or, before a Parliamentary Committee, to sift the schemes of an engineer,—or, before a Commissioner of Lunacy, to try the sanity of some crotchety man whose friends think they

might manage his estate better than himself can do it. For him there is no time for previous "cramming;" he must possess this various knowledge beforehand, and so that it may be ready for use at any moment.

Thus considered, the assertion will not be deemed extravagant, that the duties of the Advocate, if not the loftiest exercise of the mind, demand a larger amount of intelligence and call into operation a greater number of mental faculties, than any other profession to which the art of oratory appertains, and therefore that it should not be adopted without the most anxious self-scrutiny, and, when embraced, should be made the subject of systematic study;—for, in fact, it can be accomplished only by enormous labour directed to the cultivation of a rare combination of natural endowments.

### III.

#### NATURAL QUALIFICATIONS.

NATURE has not cast all minds in the same mould. That every part in the drama of society may be properly filled, a wise Providence has created an infinite variety of capacities. It is vain to struggle against the decree, or endeavour to become that for which Nature has not designed us. By industry we may improve our natural faculties to a limited extent; but vain is the effort to cultivate into fair proportions powers denied or dwarfed at birth. Let parents and teachers devise the most promising plans for the future vocations of youth, apart from the consideration of natural capacity, and their schemes will be defeated and their hopes blighted. For awhile there may be a show of progress in the path prescribed; but, ere long, Nature asserts her empire, and before her will we must bend or break. A pursuit that is distasteful is never prosperous. Where there is a decided fitness for any occupation,

sooner or later we find "the way of life" following the bent, and success crowning the labours that are those of love. To the thoughtful observer there is nothing more remarkable in the phenomena of society than the certainty with which, amid its jostlings and shakings, almost every man finds his proper place, and the nice adjustment by which all its strata are supplied with exactly so many ministers to its wants as those wants demand.

The first duty, therefore, of him who aspires to the high and difficult office of an Advocate, is to institute a rigid self-examination, and to crave the honest opinion of a sagacious friend, whether he does indeed possess the natural qualifications without which industry will be vain and disappointment certain.

And it may not be useless to precede our survey of the natural qualifications required by one who would be an Advocate, with a word of warning against an error to which all, but especially the young and enthusiastic, are very prone in their endeavours after self-knowledge. Let the student beware lest he mistake *aspiration* for *inspiration*; *ambition* for *capacity*; *desire* for *power*. In all intellectual pursuits there is no error so common and so fatal as this. Literature abounds in instances of it, and at the Bar they are not less numerous. Let the young man choosing a profession keep the remembrance of it before him, and ask himself, not "What do I *wish* to be?" but, "What am I *qualified* to become?"

Preliminary to a self-examination, undertaken,



with serious intent, to ascertain whether his *natural* capacities are such as to justify him in aspiring to the 'honours of an Advocate, it is necessary that he should have plainly before him a catalogue of the qualifications required.

That let us now endeavour to supply.

## IV.

### PHYSICAL QUALIFICATIONS.

CERTAIN Physical Qualifications are as essential as those of the intellect. Wanting the one, the others avail nothing ; so necessary are they, indeed, that an Advocate well endowed with them will appear to more advantage, attain to a wider reputation, and be more successful, than an Advocate largely gifted with the Intellectual, but wanting the Physical capacities.

And, first, has he a healthy frame, capable of enduring long-continued exertion of mind and body, the confinement of the study, the excitement of practice, the crowded court by day, the vigil of thought by night? Can he subsist with a sleep of five hours? Can he, without dyspepsia, endure irregular meals—hasty eatings and long fastings? If he be not blessed by Nature with the vigorous constitution that will bear *all* this, and more, let him not dream of adventuring into the arena of Advocacy.

Let him look to his lungs. If they be feeble, there is no hope for him. Let him be assured that they possess both power and capacity. They must be competent to express and to endure. A thin small voice, womanish and weak, will fail to impress the soundest arguments upon an audience over whom the shows of things have more influence than the substance they hide. It is difficult not to associate a small voice with a feeble intellect. In fact they have no relationship, as, upon acquaintance with the owner, is frequently discovered. But an audience can judge only by first impressions; they cannot enjoy the intimacy necessary to ascertain the true measure of the mind that speaks through so unhappy an instrument. Perhaps it will be said that this is a defect, but not a fatal one; and instances will be cited of orators of great fame at the Bar, in the Pulpit, and in the Senate, whose voices were inharmonious and displeasing. Sheil screamed; Roebuck squeaks; true; but those were voices wanting in tone only, not in volume. The 'scream and the squeak were uttered with a *power* that excluded any sense of mental weakness in the orators. The hopeless voice here alluded to is the *small* voice—the woman voice. Mere harshness and dissonance are faults which anxious efforts should be made to amend, but which do not unfit the Advocate for his office. You may dislike, but you listen; your ear may be offended, but your mind will be informed; you may feel pain, but never contempt.

A frame generally healthy, and sound lungs espe-

cially, are the physical qualifications *essential* to an Advocate, and, wanting which, the youth should, without hesitation, abandon the Profession. 'All others are desirable accessories, but their absence is not fatal; they are only obstacles to success, which may be obtained, either in spite of them, or by conquering them. But these are natural barriers which industry cannot remove;—defects which no amount of capacity, in other respects, can counterbalance: because the sound mind cannot exercise itself but in the sound body, nor can the thoughts of the most masculine intellect impress themselves upon other minds, when conveyed in feeble and feminine accents.

## V.

### MENTAL QUALIFICATIONS.

A REVIEW of the catalogue of Mental Qualifications will require more consideration; it is so much longer, more difficult, and perhaps, in parts, more disputable. But, for the sake of order, it will be as well to throw into groups such of them as have certain relationships one with another. First, then, for the *Intellectual*, secondly, for the *Moral*, Qualifications.

#### INTELLECTUAL QUALIFICATIONS.

The easiest mode of dealing with this branch of the subject would be the usual convenient dictum, "You should possess ALL." But it is only when they come to be examined in detail, and their relative importance to the Advocate investigated, in order to ascertain what are essential, what desirable but not indispensable, what ornamental only, that the reader, anxious to learn the measure of his

own competency, can rely with confidence upon the result of his scrutiny. Even at the risk of tediousness, therefore, we purpose to note each faculty separately, and to show the extent of its importance in the formation of the Advocate.

It is necessary to premise that this catalogue will follow no scientific formula, nor shall we plunge into the labyrinths of metaphysics, nor endeavour to observe strictly the definitions of the mental faculties, as propounded by the philosophers. It will be enough for the purposes of this treatise to employ terms in their popular meaning and consider the broad features of the mind, as universally recognised. If, therefore, we depart from the systems of Locke, or Browne, or Stewart, or Combe, it is without intention to imply approval of or dissent from either, but to quit ground that may be disputed for that upon which there is a general agreement.

The first faculty required by the Advocate, and that in an eminent degree, is PERCEPTION ;—keenness of observation ;—clearness and quickness of comprehension. A subject must be seen and understood in its entirety and in its details almost at the same instant and with the rapidity, as it were, of an intuition. For the Advocate there is no time to ponder upon a thought, and turn it over and over in his mind, and master it by degrees. He must grasp it faster than speech can convey, and measure it as he grasps.

This is the faculty by which the Advocate reads the thoughts of witnesses and the feelings of juries.

This enables him, as by an instinct, to avail himself, for the furtherance of his cause, of any circumstance that transpires in the course of the trial. It shows him the seeming and the latent bearings upon his case of every fact as it is developed, and enables him to adopt suddenly a course, it may be, altogether differing from that upon which he started. Another faculty, indeed, is necessary to this prompt decision; but it is the quick Perception that presents the materials upon which the ready judgment must be formed.

Clear and quick Perception is, in truth, the foundation—the corner stone—of the mental character of the Advocate. Without that, all other qualifications are worthless, for they can only mould and inspire the material which Perception supplies. If it be not rapid as the lightning, the time is gone for the exercise of the judgment, or the tintings of the imagination, or the awakening of the sympathies.

Let, then, the self-questioner first be assured that he possesses quick and clear powers of Perception. If he feel any doubt upon this; if one glance be not sufficient to transfer an object to his mind, and fix it there; if the moment of its impression does not reveal its aspects, however many-faced, and its bearings, however various, upon the other facts with which it is associated,—let him not seek to be an Advocate: success is hopeless; disappointment certain.

Next to it, and only second to it in importance—if, indeed, it may not claim equal rank—is a sound

and prompt JUDGMENT. They are partners for all practical purposes. Perception supplies the material upon which the Judgment operates. The chief element in the Judgment is the reasoning faculty,—the distinctive feature of humanity ; it traces causes and deduces consequences,—thus linking the present with the past and the future. But it is less frequently found in any strength than is Perception, and it is usually less cultivated. Even where it exists in some power, it is rarely combined with the quality of *quickness*. Yet is this union necessary to the Advocate. His act of reasoning must be imperceptible in its gradations, and yet clear and sound in its conclusions. While he pauses to reflect, his cause is lost.

Nor less is this faculty required to enable him to convince the judgments of others. He must have his argument clear in his own mind or he cannot clearly convey it to the minds of his audience. Confused speech is the consequence and the sign of confused thought. In oratory, the mind must be continually a little way in advance of the lips. While the speaker is uttering one sentence, he ought to be framing the next. If the Judgment be at all tardy, not only is this impossible, but there will be a painful pause and hesitation, or, still worse, a confusion of words thrown in to stop the gap until the halting Reason can perform its office.

The possession, therefore, of a sound and rapid Judgment is needful to the Advocate, and he who wants it would be wise to adopt some other profes-



sion, where it is either less in request, or in which more time is permitted for its operations.

But rapid and clear Perception, ready and accurate Judgment, will not suffice without IMAGINATION, to give shape to thoughts, to infuse the glow of colour into expression, and make words pictures. It is not enough that an Advocate has, in his own mind, an accurate vision of a place, a person, an event, or that he shall be able, in a moment, with the clearest logical acuteness, to propound his argument. He needs to convey to other minds the picture painted on his own; he has to convince judgments for the most part slower than his in the process of reasoning, and to whom words do not always convey the same meaning as that which they present to him. In Advocacy, fact is always the foundation of argument, and upon the clearness with which the Advocate puts his facts will depend the force of the arguments he founds upon them. Wanting Imagination, he can never master the art of word-painting; without a mastery of that art, he cannot summon a distinct conception of scenes and objects before the mind's eye of his audience; this failing, he cannot influence their judgments or even their sympathies. Mark the Advocates of the same Bar at any Assizes, and note the different degrees of interest with which you listen,—the different effects which they produce upon your mind, and unconsciously on your judgment of the causes they plead. One is precise, correct, hard,—his language scholarly, his composition perfect as a prize essay, his reasoning close and accurate, his

learning profound, his tone solemn, his manner imposing: the most critical eye can find no fault in him. But when the novelty of a strange voice is over, your attention flags, in spite of your desire to hear and be instructed; your thoughts wander;—it is with an effort you accompany his statement of facts and his train of argument. They enter at the ear, but, with all your desire to receive them, they do not write themselves on your mind. They are *words* that in their cold correctness convey no images of *things*. When the orator has ceased, you look for the results: you find only a confused, disjointed mass of imperfect ideas; the places, and persons, and objects of the story he has been talking about are but dimly distinguished: there is no *life* nor *colour* in them; and their relationship to one another, which it was the Advocate's purpose to point out, is left still more uncertain than when he began to explain it. Hence you are unable to understand the bearings of his arguments, or to see the point of his conclusions; and the cause of his client has suffered in your estimation, for you not unnaturally suppose that a case which so learned a Lawyer and so acute a reasoner has left in so unsatisfactory a condition, must owe its indistinctness rather to its own weakness than to the incapacity of its Advocate to invest it with the life and colour, which it is the province of the Imagination to impart to speech.

Let him be followed by another of different character. He may not be quite so classically correct in language, so pure in composition, so terse

and close in argument: perhaps your *critical* taste does not so much approve him. But you listen, and soon, instead of an effort to keep the attention awake, you cannot choose but hear. Like the Ancient Mariner with the Wedding Guest, he holds you as by a spell. Let him want almost every seeming advantage his predecessor enjoyed, — aspect, manner, profundity of learning, school logic,—his words are *things*, not abstractions; each one calls up a distinct image in your mind; persons, and places, and the order of events, gestures and tones, and even the fleeting expressions of faces, are summoned before your mental vision, and the picture, complete as in his own mind, perfect in its details and proportions, lives before you. You become yourself a witness and all your sympathies are kindled by the interest of a spectator. Then, with ease he shows you how this or that occurrence or position of affairs could or could not have existed, according to the view he desires you to adopt. You see,—you comprehend,—you are *convinced*; and when he resumes his seat, you are satisfied that he has the right with him.

The faculty by which he effects this triumph of the art of Advocacy is *Imagination*. That imparts form and colour to his thoughts, gives vividness and glow to his language, and summons before other minds the vision that is painted on his own. Hence it is not merely one of the graces and ornaments of the Advocate—but, like the twain we have already noticed,—*indispensable* to him.

Turning from the Intellectual to the MORAL

faculties, we find that these are no less necessary to the Advocate. He must be as quick to *feel* as to *perceive* and to *judge*. By that term we describe all the *sentiments*, that is to say, the faculties that are stirred within us on the presentation of the proper objects of them; the *Emotions* that speak long before the more sluggish Reason can pronounce her verdict. Such are Conscientiousness, Benevolence, Veneration, Firmness and so forth. These operate mainly by sympathy. So are we constituted, that an emotion in another, strongly and naturally expressed, excites a corresponding emotion in ourselves. Mark, then, the importance of quick and powerful emotions in the Advocate. Without them he cannot feel strongly; if he does not feel strongly himself, by no art can he excite through sympathy the feelings of his audience. If, on the contrary, his sense of right, his indignation at wrong, his emotions of benevolence, are enlisted in the cause he is advocating, they make themselves visible upon his face, they utter their own natural, and therefore appropriate, language; they kindle, even by their very presence, a sympathy in the minds of the audience, and thus by *persuasion* he is enabled to accomplish more even than by his appeals to their *convictions*.

Moreover, the Advocate, beyond all other men, needs to possess the respect and confidence of his fellow men. *Character* to him is of incalculable value. They must have faith in his *honesty* of purpose, in the *truthfulness* of his nature, in the general *benevolence* of his aims, in his love of

*justice*, and his detestation of wrong; in his contempt for trickery and unworthy arts, whereby to procure a temporary triumph in *snatching* a verdict; in his consciousness of the greatness of his calling, and the actual boundaries of its duties; or they will look upon him with suspicion, distrust his assertions, and, however great his abilities and brilliant his oratory, listen to him as an actor merely, whose part, albeit so cleverly played, is, after all, but an assumed one, his emotions feigned and his argument an ingenious fallacy.

And to complete the whole, and wanting which the rest will fail to perform their mission, the Advocate must possess, as the gift of nature, and that, too, in a large degree, the class of faculties which, for lack of an apter term, have been styled **THE PROPENSITIES**, and which are possessed by man in common with the inferior animals. He needs undaunted *Courage*, resolute energy in attack or defence, *Self-confidence*, and these combined with great *Cautiousness* and unflinching *Firmness*. It is the presence or absence of these faculties that produces the sense of strength or weakness we instantly recognise when listening to a speaker; which we are unable to define, but which we *feel*; and which may perhaps be best described by the terms *power* and *feebleness*. The effect of the one is to subdue to itself all minds of lesser power; the other produces an involuntary feeling of contempt, and causes the wisest words to lose their influence.

Lastly, there is a faculty for which philosophers have found no name, which by few has been admitted into their systems, but whose presence, nevertheless, will be recognised the moment its office is described. We allude to the faculty, rarely found, but almost more, perhaps, than any other necessary to the Advocate,—or, at least, the *absence* of which would be, more than that of any other, fatal to his hopes,—by which he is enabled, with ease and rapidity, to *concentrate his whole mind* upon the matter immediately before him. His duties require him often, within the space of a single day, to devote all his energies to half-a-dozen different cases, each altogether unlike the rest in its character. Before he can do justice to any one, he must forget the rest as completely as if they had never been in his thoughts; he must therefore be capable of turning from that one to these others, and, it may be, in a minute's time, to cast aside entirely all that had been engrossing every faculty of his mind for the last three hours, and throw himself with equal devotion into a matter altogether of a different class and become equally absorbed in that during its progress; and thus through days, and weeks, and months, and years. If the student have not this rare faculty, let him not waste his precious time in seeking to become an Advocate.

But, it may be asked, how is a man to ascertain if he possesses these needful natural qualifications? Undoubtedly the search presents the difficulties that impede all attempts at self-knowledge. But

they are not insuperable. They may be overcome by rigid examination, and by seeking the counsel of a judicious and honest friend.

For the first, bearing ever in mind that *desire* is not *power*, nor *ambition capacity*, let him calmly and deliberately, in the loneliness of his study, or, still better, in the meditations of a solitary walk, task that inward consciousness which usually whispers the truth to us, however slow we may be to accept it, as to his actual possession of these natural qualifications, each in its turn. If the reply be doubtful, let him invoke the aid of memory. He should recal the various circumstances in his life in which a demand has been made for the sudden exertion of those faculties. *Did* they, *in fact*, come when they were called for? *Were* they equal to the occasion? In *practice* has he found his perceptions prompt and clear, his judgment ready and accurate? *Does* he paint in words? *Is* he firm and fearless? *Has* he force and energy of character? And these, not as speculations merely, but *proved* in the experiences of his past life? Not content with this scrutiny, let him go to a court of justice, or to a public meeting, and as the business proceeds, question himself thus:—"What if, instead of being a spectator, I were an actor in this scene, how should I *feel*? What should I *do*? If that resolution were placed in my hands, what should I *say*? If I were required to cross-examine that witness, *could* I accomplish it? How should I reply in this case—how open that defence?" If he find his faculties fail to respond, he may well doubt his

natural qualifications for the office. Let him not, like so many others who waste the best season of their lives in a vain attempt to become that which Nature has forbidden them to be, flatter himself with the false hope that, arrayed in wig and gown, and compelled by the possession of a brief, there would arise within him, as by an inspiration, the powers he cannot call up now, sitting there as an impartial, unexcited spectator; on the contrary, the consciousness of incapacity would then only the more disable him.

It must be for want of some such stern preliminary self-examination as this that the painful spectacle is presented of so many men crowding the mess-tables at the Inns of Court, and sitting in dignified ease at the Bar at Westminster and on the Circuits, so obviously deficient in the natural qualifications requisite for the arduous and difficult profession they have adopted, that it is a matter for amazement how they could so have mistaken themselves as to prefer a path in which success for them is *impossible*, and whose end can only be blighted hopes and a life of poverty or of dependance, to one for which Nature *has* qualified them, and whose end would be happiness, honour and wealth.

We have dwelt the more earnestly on this, because we have witnessed so many instances of the misery resulting from the inconsiderate ambition of parents and of youth, that we are anxious emphatically to impress upon all who may consult these pages the necessity of carefully ascertaining



if they possess the natural qualifications for an Advocate, before they stake their fortunes and happiness upon the pursuit of a profession in which, if the highest honours beckon on the one hand, an inglorious poverty frowns on the other, and between them there is no resting-place.



## VI.

### PECUNIARY RESOURCES.

BEING assured that he possesses the necessary *natural* qualifications, the aspirant should next betake himself to the more easy, but less agreeable, task of calculating his PECUNIARY RESOURCES.

As this is a subject upon which much misunderstanding prevails, not only among young men, whose disregard of it may be excused, but among parents, who ought to know better; as many fallacies are current upon it in society, and which are productive of an enormous amount of disappointment and wretchedness, we make no apology for dwelling upon it at a length proportioned to its real importance.

There is a very prevalent impression, that provided a man can pay the cost of going to the Bar, he needs not to concern himself about the means of living *after* he is there; the examples of a few who have toiled their way from poverty to distinction

are triumphantly described to hesitating youth as a stimulus to rush into the arena, and the dicta of two or three authorities are cited, to the effect that nothing less than the urgency of poverty will impel a man to the drudgery requisite to success.

But Experience tells a different tale. Doubtless a few—*very few*—have conquered poverty, and thriven in spite of, or, perhaps, even by reason of, the difficulties that have encompassed them. But how few! Of all the great men whom the English Bar has produced, how many are there who entered upon it without an assured income, sufficient at the least for a *maintenance*, possessed by them independently of their Profession, supplied by friends, if not the proceeds of property of their own? It is questionable whether the records of the English Bar could produce twenty such fortunate persons. But they who adduce the twenty examples of triumph over the difficulties of destitution, take no count of the thousands who wrestled with poverty and were *defeated* in the struggle, who died of broken spirits, or passed to some other pursuit, after the best years of their lives had been wasted in a vain attempt to live poorly by a Profession which demands the addition of experience to ability and learning before it will bestow its prizes, or even provide subsistence.

Let us trace the progress of a Barrister from his first entrance into the Profession as a student, until the period when he may fairly expect, if he have the natural and acquired qualifications, to obtain a

business that will support him as a gentleman. Thus we shall be enabled to ascertain very nearly what are the pecuniary resources on which he should be enabled to rely before he hazards his happiness in the pursuit of wealth and honour, *certainly so distant, and usually so dubious.*

The following statements may be relied upon as the results of *actual experience.*

Passing by the cost of the education requisite to fit a youth for entering upon the formal study of the Law, these estimates are limited, first, to the cost of *legal education*; and, secondly, to that of the pursuit of the Profession during the interval that must elapse, even with the most fortunate and the most able, before the subsistence of a gentleman can be hoped for.

As the first step, a deposit of 100*l.* must be made with the Treasurer of the Inn of Court selected by the student. The annual fees required are trifling, not exceeding 10*l.* But the practice of the Law must be learned in the chambers of a Barrister or Pleader, to which the established fee of admission is 100*l.* per annum. To one who knows nothing of the Law previously to his beginning to keep his terms, the three years over which that ceremony extends are not more than sufficient for the most sedulous attendance in the chambers successively of a Conveyancer, a Pleader, and a Barrister. Less than that cannot qualify the student for the *practice* of his Profession. But say that he dispenses with one of these years of pupilage, and devotes it to diligent study unassisted, there remain two years

of *necessary* instruction, with a fee of 200*l.* to be paid for it.

But this is not all. During his three years of study the student must have a subsistence, independently of labour. For this, less than 100*l.* per annum cannot well be counted. Thus, before he can place himself in a position to enter upon the practice of his Profession, an expenditure of 630*l.*, at the least, must be provided for.

Let not any reader flatter himself with the hope that he may venture to dispense with the 200*l.* fee, because it is not made a condition of his call; or that he can earn his subsistence by some other pursuit alien to the study of the Law during the period of his probation. It is quite true that *some* do so, and that *he* may attempt it; but if he goes to the Bar *with intent to live by it*, he must consider the consequences. If he have not learned the practice of the Law in the chambers of a Practitioner, or the theory of Law in his own, he may be called to the Bar, he may put on its robes, he may frequent the Courts, he may even obtain business for a time, but it is *impossible* that he can *succeed*.

Entire devotion of *the whole time* to the most diligent and laborious study of the Law for three years is scarcely sufficient to supply the student with knowledge enough for the conduct even of the less important business that falls to the lot of a junior. If he have not the practical knowledge acquired as a pupil, he will be perplexed at every trifle in practice, in a public court, where perplexity is ruin. If he look to live during the three years

by some other pursuit, then that occupation of his time is equally fatal to his *legal education*. It is a self-evident proposition, that if the most unwearied diligence devoted daily to reading and practice for three years scarcely suffices to introduce him who comes to it a stranger into enough of law for the requirements of a junior's practice,—the three years engaged in obtaining subsistence by a pursuit foreign to the Law must, in fact, be a fatal disqualification.

Let this be well considered by those who may be prudent enough to calculate probabilities before they stake their fortunes upon the issue.

"*Cæsarem vehis*" has been ever since repeated as an illustrious instance of self-confidence. But Cæsar was in that only a type of mankind. Each of us is a Caesar in his own esteem. Every man has faith in his good fortune, that it will enable him to succeed where all others fail, and that to him even the laws of Nature will yield. In many respects it is a useful confidence; but it should always be taken into calculation by the prudent in estimating probabilities of success in any calling, and they will be wise who do not suffer it to blind them to plain facts and figures, however disappointing these may be to ambition.

This common weakness of our nature should be borne in mind in the choice of *any* pursuit; but in that of the Bar beyond all others. It is, perhaps, that alone in which success *cannot* be attained without competency. The reason is, that Advocacy is the only profession in which a man *cannot* disguise his deficiencies. In others, he has but to say

little and look wise to be accounted wise by those who have no opportunity of peeping below the surface. The physician can be properly judged only by doctors as learned as himself, and even from them, by prudence, he may conceal the extent of his ignorance. The Attorney may be almost altogether unskilled in Law, and yet, if he have good common sense, not only maintain a high professional reputation, but really transact his business as satisfactorily as the most profoundly read of his fellows; because he can obtain his *law* from counsel when he requires it, and his *practice* from a clever clerk; but the Advocate cannot thus be learned by deputy; *he* cannot be of those who are

——— reputed wise

When they say nothing.

Such as he is he must appear to the whole world —alike to those who are qualified to form a judgment of his matter, as of his manner; of his knowledge of the law, as of his general knowledge; of his capacities, as of his acquirements; of his readiness and tact, as of his slowness of perception and judgment; of his powers of argument, as of the discursiveness or inconclusiveness of his reasonings. In the most severely critical of all assemblies, in the presence of Judges, Counsel, Attorneys, Juries, the Public, including all degrees of intellect and all varieties of cultivation, he exposes himself to every shade and form of criticism; many of the critics, moreover, not friendly, and ready to seize upon every show of weakness and inefficiency. Rarely, indeed, can he come armed

at all points for the particular case—crammed for the occasion—so that his defects may not be discovered. Such a reliance would make failure more sure and fatal, for not in one case in a hundred will he find that he had anticipated the turn of fact or argument, and the preparation for a different one would but make his confusion greater, when the lesson so carefully conned had proved not to be to the purpose. Nor more can he hope to hide defective knowledge under any fluency of words. In a popular assembly, mere voice often passes for ability, and he who talks glibly takes rank before him who discourses wisely. Not so is it in a Court of Justice, nor in Parliament, nor, indeed, in any gathering of men for the purpose of transacting *actual business*. There *they* are always preferred who *speak to the point* in the most sensible manner—if with ease, and grace, and eloquence, so much the better—they are added recommendations—but always is substance preferred to sound, and ease, grace and eloquence, *without wisdom*, are deemed only impertinences and soon come to be disregarded.

The practical conclusion we would inculcate is, that no prudent man should venture upon the profession of an Advocate, unless he can afford to devote to the study of it his whole time, day and night, for at least three or four years before he enters upon practice; nothing less than such a dedication of his hours to the actual pursuit sufficing to qualify him to endure the ordeal we have described, and upon the result of which his future



fortunes will depend. Nor should connection nor friends be too much estimated in the calculation. True it is that connections are of infinite advantage to ability, but they will not support incapacity. Wanting friends to afford to it the opportunity for display, the greatest ability may, and too often does, pine away a life of obscurity and poverty. But, on the other hand, instances are even more numerous of men who have been "killed by kindness;" whose friends have prematurely pushed them forward, making their unfitness known, and inflicting an ill character upon them, which abides with them for ever, blighting all hope for the future. Let it be borne in mind by the aspirant after forensic fame, that no partiality of friends, no influence of connection, can help him to success at the Bar, if he have not the needful qualifications, natural and acquired. Not even parental solicitude could twice venture to intrust him with his client's cause, if he show himself incompetent to conduct it. Every day's experience teaches this; for continually is the spectacle exhibited of men coming to the Bar with connections that have the power to place a fortune at their feet, bearing an armful of briefs for a term or two, proving themselves incompetent, at the moment of trial, and then falling back into the ranks of the briefless, without so much as the consolation of hope to cheer their prospects. The Bar is the only Profession in which connections can do nothing to advance or sustain the feeble, though they can do much to help to a position those who have the capacity to maintain it.

The calculation of expenses must not be closed with the Call to the Bar. On the contrary, the subsequent costs must be considered still more seriously. To the former there is at least a limit; the uttermost farthing can be known beforehand. To the latter, the most sagacious, the most prudent, the most far-sighted, can set no limit. Three years of expenditure brings a man to the Bar; but who will pretend to assure himself how many years of outlay will be necessary before he will be enabled to maintain himself there? With the most fortunate they must be many; with the multitude they are a considerable fraction of a life; with not a few the struggle ends but in despair or death.

But inasmuch as our present purpose is to set before those who have the *natural* capacities for the calling the *data* by which they may be enabled to ascertain if they possess also the *artificial* qualifications, we will assume the case of a man in all other respects qualified to succeed as an Advocate, and endeavour to learn what are the expenses upon which he must calculate, before his abilities can hope to be rewarded by an income sufficient for his support.

Nor is this estimate conjectural. The sums that will be set down for outlay are those which appear in the accounts of one who has used the most careful economy and calculated every item. Here and there it might be possible to reduce a charge by a few pounds, but others are less than in ordinary circumstances could be relied upon. The whole

will be found, we believe, a fair representation of a young Barrister's *necessary* expenditure.

He must have chambers, and a clerk, and books. He must attend his Quarter Sessions and his Circuit. He must eat, and drink, and clothe. Occupying the place of a gentleman, he must preserve the appearance of one.

At the first, he will, of course, be content with a second or third story in the Temple. Let, therefore, his chambers be set down at 30*l.* per annum; his laundress at 12*l.*; his clerk at 15*l.*; and his books, if he limit them to a copy of the "regular reports," at 10*l.* Add to these primary expenses, 10*l.* for robing-room, rates, fees, and sundries, and there is a total of 77*l.*, which may be termed the cost of chambers.

His other expenses are yet more serious. There are four Sessions in each year in every county—in most of them five, in some eight. But, as we are here considering the *least* expenditure of an Advocate at the commencement of his career, we will suppose that his Sessions demand *five* attendances. The lowest cost at which each can be estimated is 8*l.*—the total, 40*l.*

His Circuit expenses are to some extent optional. He *may* attend at all the Assizes; he *must* attend some. But inasmuch as it is the practice for men with straitened means to select, in the beginning of their career, those only of the counties in their Circuits in which they have connections, it will be sufficient to place *three* to the account, and estimating the cost of these at the very lowest to which

the most calculating economy can reduce them, each may be counted at 8*l.*; and there being two Circuits in the year, the total cost will consequently be 48*l.* To this, however, it is necessary to add the Circuit fees, which are about 7*l.* per annum.

Thus we have, as the inevitable *professional* costs of an Advocate, for Chambers, Circuits, and Sessions, an expenditure of 172*l.* per annum.

But this includes nothing of his personal expenditure. He must subsist and clothe like a gentleman, and incur some personal expenses in the claims of his social position. His chambers provide him with lodging. His clerk and laundress suffice for servants. Certainly we do not much over-estimate his necessities, if we sum them together at 100*l.* for the year.

Thus the grand total of a Barrister's annual expenditure, upon which he must calculate as *inevitable*, and without some assurance of which it is worse than rashness to adventure upon the pursuit, even though all other things give promise of success, amounts to the sum of 272*l.* per annum.

And even with a margin for reductions here and there from the above items — the very largest clippings that the most sanguine temperament could venture to make — it may by no ingenuity be brought below 250*l.*

But total sums are never properly comprehended, especially by the young and hopeful; 250*l.* upon paper looks like something indefinite in the dim distance of a remote future — which by some of those chances that the imagination loves to

picture, *may be* provided for when the time comes for payment,—if ever it does come,—of which youth is apt not to appreciate the *uncertainty*. Let it, then, be viewed in the more appreciable shape of a demand, that cannot be averted or postponed,—a claim, that will admit of no denial,—of 5*l.* per week —of 15*s.* every day !

It is unhappily too true that, by parents as well as by youth, these calculations are usually wholly unthought of when choice is made of a profession. Often is this the result of ignorance, but more frequently of a foolish confidence that, despite of all experience, such is the genius, or such the connection, in their own particular case, that the expenses are of little moment, for assured success will yield an income that will amply meet them, if not in the first year, in two or three years at the utmost.

As this is by far the most common and the most fatal error, and the cause of more misery and disappointment than any other, it is desirable that the delusion should be dispelled by reference to *facts*, which will be readily confirmed by all who have had experience of the anticipations of a call party and the realisation of the first seven years : who have compared *results* with *hopes*, and the *performances* of friends and connections with their *promises*.

The following statement, like all we have made or may hereafter make, is the result of *actual experience*, and we have purposely taken for an instance a case that will remarkably illustrate the

argument. We have not sought among the unsuccessful, but from those who have made advances *far beyond the average* even of such as are called successful.

We have been permitted access to the fee-book of one who would be deemed singularly fortunate, and whose case remarkably illustrates the above assertions, because it had peculiar advantages, which could not be found in one instance in five hundred. It is that of one who became an Advocate in his mature years, with the invaluable advantage of that experience of the world which age only can give, and for which no genius nor learning can compensate, and that practical knowledge of the Law which is obtained by those who have had their legal education in a clerkship to, and some years of practice in, the other branch of the Profession, and who, therefore, necessarily must have enjoyed a degree of confidence, on account of age and experience, which those who want these requisites, although of equal standing at the Bar, cannot expect and could not obtain. The fee-book of our informant, even with these advantages, exhibits the following professional receipts:—

1st year	54 <i>l.</i>
2nd year	92 <i>l.</i>
3rd year	140 <i>l.</i>
4th year	198 <i>l.</i>
5th year	237 <i>l.</i>

And these were the professional gains of a man whom everybody called *successful*;—who *was* successful! At the end of *five* years *he* did not earn

enough to pay his expenses. Probably, by the end of the sixth year, he might have done so. But in the first five years of his singularly successful career as an Advocate, his total *expenditure* must have been 1,350*l.*; his total *receipts* were 721*l.*

If so it be with one eminently successful, what must it be with others? If *he* could not make an income equal to his unavoidable expenditure, until five long years had passed, how many years must be counted upon by those who have to combat the disadvantages of youth and inexperience?

There is another element in the estimate that must not be lost sight of, although we never remember to have seen or heard it adduced in any calculation of the chances of the Bar.

A successful junior is seen with many briefs, and engaged in many cases. It is commonly supposed that he must be making a good income—at least, earning a livelihood by his Profession. But nobody considers what is the amount of his *fees*. A junior may have his hands full of business and yet the proceeds will be small. To appreciate this effect of the lowness of fees upon the practical results as regards income, let it be considered for a moment how many briefs a junior must hold—what an immense amount of business he must not only appear to be doing, but be *really* doing,—in order to produce, at the rate of junior's fees, an income of 250*l.* per annum! Say that they average two guineas each, he must hold 125 briefs in the year to enable him to subsist by his Profession. But, in fact, the briefs of a junior do not average so much. At the Sessions and

Assizes the great majority of fees do not exceed a guinea. In the fee-book before us we find that, in the five first years, were held 441 briefs, which, it appears, yielded 721*l.*, or a little more than one guinea and a half upon an average, and this may perhaps be deemed a safe estimate for others. At that rate, an Advocate, while a junior, must calculate on acquiring a patronage of no less than 166 briefs per annum, in order to meet his unavoidable expenses.

We have put these facts plainly, and with some elaboration of detail, because the public are entirely ignorant of them; because few even of the members of the Profession have ever seriously considered them; and because the consequences of that ignorance have been very serious to individuals, who have rushed into a costly pursuit without sufficiently calculating the proportion of their means to its demands, and to families, ill able to endure the burden, who have been for years laden with the support of members who, in almost any other calling, in a few months, or in two or three years at the most, would have been enabled to maintain themselves in comfort if not in affluence. An Advocate (and, as it is said, a Physician), are the only two Professions which, while compelled to a large expenditure, cannot, by any ability, or any conceivable good fortune, earn their inevitable expenses for many years, because they are the only two Professions in which age and experience are requisite to confidence—and really to competency,—with this added disadvantage in the case of the Advocate,



that the ascent to honour and profit does not depend upon ability alone, but must be made by that slow march to *seniority* in standing, which accident may slightly abridge, but which time only regulates, and which, at the best, must extend over many—many long years. And when it comes at last—as come it will, if there be the capacity—too often is the fortune that it brings swallowed up by the demands of debts that have accumulated during the years of waiting—and of poverty.

The practical conclusion we would deduce from the review we have thus taken of the expenses unavoidably attendant upon the profession of Advocate, and which amount at the least to 650*l.* previous to his call, and to 250*l.* per annum afterwards, is this :—Let no man, who values his happiness, or his ultimate success in life, make the Bar his Profession, unless he has resources, other than his Profession, upon which he can *rely* for a clear income of 150*l.* per annum, at the least. This will still leave 100*l.* to be provided for by that Profession. But that is a risk he may not unreasonably run, if conscious that, in *all* other respects, he is qualified for ultimate success. With *less* than that, it would be *unwise* to incur the hazard. With *no* resources, as is sometimes seen, it is *madness*.

## VII.

### WILL AND COURAGE.

It is not enough that so many natural qualifications should combine with the artificial ones we have described, to permit a prudent man to adventure upon the profession of an Advocate; he must further be assured, by the same stern self-examination, that, having all those qualifications, he possesses also the **WILL** to grapple with and to subdue the difficulties and obstacles so thickly strewn upon his path, and the **COURAGE** that can sustain him to the end,—through Herculean *toil* at the first, then through the yet more trying years of *waiting*, and, lastly, through the life dedicated to *labour* which will be his lot, when success shall at length reward his exertions and his patience.

Has he a resolute **WILL**—the Will that subdues and moulds circumstances to its own needs; the Will that resolves—and *does*; the Will that disappointment cannot disturb, nor delay weary, nor

opposition terrify, nor obstacles deter, nor difficulties defeat?

Has he the MORAL COURAGE to smile at the assaults of rivalry and jealousy; to bear without shrinking the poison-pointed shafts of small slander; to face abuse—and that which is still harder to endure—ridicule? To hear the whisper, and see the smile, and know that he is the object of it, and not to be dismayed nor disturbed?—To see rivals, more favoured by friends or fortune, press upon his heels, or pass him in the race, and not to lose a jot of heart or hope?—To be accused of faults of which he is guiltless?—To err, and to redeem his fault?—To confess an error, and not be abashed?—To fail, and to try again?—To be *defeated*, and not to be *subdued*?

If he want such a *Will*, or such a *Courage*, let him not adventure upon the profession of an Advocate.

Of those who enter our Courts of Law, as spectators of the proceedings, who see the Advocate with such seeming ease playing his part in that serious drama, stealing the truth out of the witnesses, arguing with the Court, making speeches to the jury, consulting with his clients, with no appearance of effort, or of labour, as if those multitudinous facts and that knowledge of the law came to him by inspiration,—how many care to reflect upon the years of toil through which this mastery of his art has been attained? But if, ambitious of the like distinction, eager for such honour, panting to possess the same power over

men's ears and minds, to be heard with such respect by Judges, so to sway Juries, to have multitudes crowding to listen, and, above all, to wield that power in the defence of the poor and defenceless and in the vindication of *right*, the visitor entertain the project of striving for the like honoured and honourable place, let him, besides assuring himself that he possesses the qualifications already described, reflect upon the mental and physical toil which an Advocate must endure in his training and in his practice, and ascertain also if HE have the WILL so to labour, the COURAGE so to endure and to spurn the temptations to indulgence, and the HEALTH of mind and body, the constitution, sturdy by nature and confirmed by temperance and exercise, requisite to resist the evil influences of long hours of study, the midnight lamp, the crowded court, irregular meals, incessant wear and tear of mind, the excitement of public speaking, the long day of labour, the short night for sleep.

Flatter not yourself, Reader, that your time of training may be shared between labour and pleasure. The years when the sense of enjoyment is the keenest must be passed by you in toil and self-denial. So much have you to learn, that, be you ever so apt at acquiring knowledge, the years between your college or school and your entrance upon the practice of this Profession, are insufficient for your education, though they be most diligently devoted to study. The law alone will demand more than that time, for even such a general knowledge of it as will suffice for the ordinary business of a

beginner. But, if you aspire to be an Advocate, the law is but a *fraction* of the acquirements requisite for you, as you will presently learn when you accompany us through the review of the Advocate's education. You must make up your mind to forget the present and live for the future; to sacrifice youth for honour and wealth in middle life; to live like a hermit; to work like a slave; to shun pleasure; to dedicate your whole time to reading, and reflection, and observation of the *business* of life: you will have little leisure to devote to its recreations, none to its frivolities.

If you doubt your courage or capacity to endure all this, do not adventure upon the profession of an Advocate.

But if you be confident in your power of self-control; if you be content to stake the pleasure of the present for the chance of the great prize that glitters in the future; if, with a full consciousness of the sacrifices you must make, the difficulties you must encounter, the toils you must undergo in the training, the delays and disappointments in the pursuit, the absorption of existence in the work when success at length arrives, and brings the fortune you will not then have the leisure to enjoy; assured that you possess the *natural mental* and *physical* qualifications, capacity of intellect, a sound frame, independent resources—in short, ABILITY, WILL, COURAGE, and HEALTH—then, we say to you, from the instant of resolve, cast aside, at once and for ever, doubt, hesitation, fear, and full of heart and hope, with unfaltering step and eye fixed

steadily upon the goal, press forward upon the race, forgetful of the past, careless of the present, and resolute to win the prize, which is not often lost by those who seek it so.

## VIII.

### THE TRAINING OF THE ADVOCATE.

It is assumed that the youth who has resolved to adventure upon the profession of an Advocate will have received that preliminary training at school and at college, at least at the former, which is *called* education. The expression is thus guarded, because that which is so termed is really but a very small portion of actual education—indeed, little more than its foundation. When the youth imagines that his studies are completed, they are, in fact, but begun.

Experience soon proves this. Every man who has established a position in any intellectual pursuit will confess how trifling a portion of his practical intelligence was *taught* to him, compared with that which was *self-acquired* after his tutors were dismissed. Imagine a youth suddenly transferred from college to take part in the actual business of the world, in *any* capacity! Of how small worth would

he find the learning of the schools, upon which he had so prided himself and built up such lofty anticipations of success in the struggle of life! He would discover that he has something to unlearn, much to learn, in which he must be his own tutor. Not that the training of the school and the college are worthless; on the contrary, they are *essential*, as the *foundations* of practical knowledge and the means by which the faculties of the mind are disciplined and strengthened and developed. We are anxious only that the student should not enter upon his new pursuit, as too often he does, with an exaggerated estimate of the value of school acquirements and college triumphs, supposing that his work is already more than half accomplished, and that he has but to appear upon the stage of life to receive there the same plaudits that greeted him in the theatre at Oxford. Let him look upon the honours he has won there but as incitements to the new labours needful for the acquisition of those greater honours to which he aspires. Let him bear in mind that the most intimate acquaintance with the classics, the utmost facility in writing and speaking Latin, the most profoundly critical knowledge of the Greek dramas, the most accurate memory of dates, the philosophy of Aristotle, the mastery of the mathematics, familiarity with the formulas of the school-logic, are in themselves of trifling worth for any *practical* purpose, and, in truth, little more than the means by which his intellect has been disciplined, his taste cultivated, his mind invigorated, for that *education* in the



realities and business of the world upon which he is now *about to enter*.

With equal humility and resolution, then, whatever his past triumphs, let him who would succeed as an Advocate apply himself to the new and larger course of training necessary to fit him for the office, as if he were at the threshold of his education, and not as if he deemed himself at the close of it, counting his former achievements but as proofs of *capacity* which, sedulously cultivated, will certainly conduct to future fame, and firm to endure the toil and self-denial through which alone the "first-class man," equally with him who has not enjoyed the great advantage of a university education, can hope to achieve the honours of a successful Advocate.

Assuming, then, that all needful preliminary education in classical and scholastic acquirements has been obtained in youth (and wanting which it would be unwise to adventure upon the Profession), we take the Student at the point in his career when he quits the school or the college, and invite him to follow us through a brief review of the course of education which it is desirable that he should adopt for the purpose of preparing himself for the Profession of an Advocate.

And that course of education will be conveniently considered under the three heads into which it naturally divides itself — viz., his MORAL, his INTELLECTUAL, and his PHYSICAL Training.

## IX.

### MORAL TRAINING

FOREMOST we place the MORAL TRAINING of the Advocate, because foremost in importance to the successful discharge of his duties is the MENS CONSCIA RECTI; and, next to that, his REPUTATION among his fellow-men. Wanting either, his INTELLECT will be shorn of half its influence.

Let the aspirant set up in his own mind the ideal of a good man, to which he should ever strive to approach nearer and nearer, remembering always that the loftiest courage and the grandest eloquence proceed from a profound consciousness of rectitude of purpose, and that the confidence of others can only be secured, and their emotions awakened, by the *reality* of sincerity and feeling in himself. Shams of every kind have no lasting success in any pursuit, least of all in the profession of an Advocate, where any *art*, other than that which is properly *nature cultivated*, fails to make more than a passing

impression of admiration at *the skill* of the *performer*. Only a genuine MAN can be a great ADVOCATE.

The character to which the student should aspire is that of the CHRISTIAN GENTLEMAN, of whose portraiture let us attempt a brief and rudely pencilled sketch.

It is *not* true that "the manners make the man;" on the contrary, as *the man* is, so are the *manners*. Manner is but the mind seen in action. Coarse manners never can accompany a refined mind, nor the graces of a gentleman conceal the spirit of a savage.

To be a *gentleman* is rightly held in higher esteem among gentlemen than to be a *nobleman*; for the latter is usually the accident of fortune, and the title independent of personal worth; the former is Nature's endowment cultivated by education. A Duke cannot be *more* than a *gentleman*, but he may be *less*. The word, however, is not used here in its vulgar sense, as descriptive of any class or calling, or of any circle, social, religious or political; nor even is it intended to designate any degree of wealth or poverty, but simply *the man*, be he of any rank, who, to that instinctive sense of right which shrinks from the very shadow of wrong, adds that consciousness of kindred with humanity which makes him respect the rights and feelings of others, and establishes a sympathy between him and every soul that is.

This is the characteristic of the GENTLEMAN, whatever his creed or colour.

But to this proud title one more proud should be joined in *our* time and country :—a title which implies something more, and claims other and loftier duties.

The Advocate should aspire to be the CHRISTIAN GENTLEMAN.

To the characteristics described as belonging to “the Gentleman,” everywhere, the *Christian Gentleman* will add the sanctions of religion. That which in the one is *cultivated instinct* ascends in the other to the distinction of *duty*.

But the superiority of the Christian Gentleman lies not in this alone. Ever present to his contemplations is a code of the purest and loftiest ethics, and a model of sublimest virtue. His piety is not a formula, or an observance of times and seasons, as if it were only the performance of an obligation; but it is a part of his being, an ever-present pervading influence, moulding his thoughts and guiding his actions, seen upon his face and heard in his voice. Christianity, *the law of love*, whose divinity is in nothing so proved as in this,—that it is the *only* religion the world has known that is *not a rite* but a *feeling*—is visible in all his sayings and doings, public and private; and thus is the stern and lofty honour of *the Gentleman* gracefully combined with the mildness and loving-kindness of *the Christian*.

If the high calling of the Advocate be rightly estimated, the advantages of—nay, the *necessity* for—the possession of such a character, will be readily acknowledged. It will be required alike for self-

sustainment in the discharge of his difficult duties, and to enable him to influence the minds of his fellow-men. His path, though exalted, is beset with temptations, so insidious, so urgent, so instant, that it needs something more prompt than the slow calculations of reason to resist them. In the hurry of a trial, the Advocate cannot pause to reflect upon the rectitude or otherwise of some suggested course; he must rely upon that inward monitor which whispers in the heart of the Christian Gentleman before the slow voice of reason can be sounded; that instinctive *sense of right*, at the touch of whose Ithuriel spear all wrong, whatever luring shape it may have assumed, starts up—the fiend confessed! The desire to please a client, the still stronger anxiety for the triumph of a verdict, continually tempts the Advocate to practices, for which, indeed, he may appeal to high authorities, but which religion and reason *forbid*. Hereafter we shall endeavour to show that the arts to which we allude, however they may contribute to temporary success, are in the end injurious to those who practise them; but, for the present purpose, admitting that they *are* too often resorted to, and that they offer very great temptations to an Advocate not already morally and religiously schooled to resist them, it will suffice to indicate their presence. The arts to which we particularly allude are those which, as we must confess, not altogether without foundation, form the staple of popular declamation against the morality of the Bar:—the browbeating of witnesses with intent to perplex the honest, and not with purpose

to confound the perjurer and wring the truth from the liar; the solemn asseveration of belief in the innocence of a prisoner whom the Advocate knows to be guilty; the yet more fearful, but, as unhappily shown by instances, not impossible, wrong of charging the innocent with the crime for the purpose of shifting it from the guilty; the taking advantage of the privilege of his gown to asperse the characters of individuals, though not at issue in the cause. We are aware that for some of these practices, and especially for the latter of them, high authorities may be adduced. But believing them to be opposed to the dictates of religion and morality; assured that "to be just and fear not" is everywhere and at all times a safe rule of conduct,—that *honesty is wisdom as well as virtue*, equally in the profession of an Advocate as in all other pursuits,—we are compelled to pronounce these practices incompatible with the character of a Christian Gentleman, and therefore to be contemned and spurned by the Advocate who rightly reads the duties of his office.

There will be no disputing as to the advantages of the character of a Christian Gentleman in the influence it gives him with all whom he has occasion to address, and it would be difficult to overrate the value of that influence. Whatever temporary profit he may sacrifice by the abandonment of the questionable arts above alluded to, he regains fifty-fold in the path thus cleared and made straight for him to the ears, and hearts, and convictions of Judges, Juries and Audiences. The confidence

they all have in his honesty, not merely predisposes them in his favour, but makes them listen, because they know that what he says he *means*; induces them to put faith in his assertions, because they are sure he will not deceive them; and inclines them to follow his argument with attention, because they are confident that all is *fairly, candidly and truthfully* conducted. The very appearance of such a man is an advantage to a cause; he imparts something of his own reputation to whatever is associated with him; and when we come to examine the details of practice, and to trace step by step the progress of a cause under his management, it will yet more plainly appear how, in every stage of it, the client reaps the benefit of being represented by an Advocate who is a Christian Gentleman.

Besides the indirect influence of reputation, such an one enjoys the direct influence of *sympathy*. His kindly views of things—his large benevolence, which comprehends all men of all classes, because “we have all of us one human heart”—his high sense of justice, as knowing no distinctions of rich and poor, high and low—his reverence for that *Law of Kindness* which Christianity teaches, but which legislatures and tribunals have been so slow to recognise—his ready indignation at oppression or unfairness in any form—his consciousness of the proud privilege of his Profession, which permits, nay, enjoins, him, in the discharge of his duty to the poorest and most friendless being in the world, to employ the same ability, the same energy, as if his client were the noblest in the land, and in his vin-

dication to beard the powerful, if need be, with eloquence licensed to all *honest* efforts;—this consciousness, we say, gives to his words a dignity that commands respect and attention, and opens for them a way right into the feelings and convictions of his audience, and stirs their answering emotions. The intelligent applaud, the dullest listen: he pleases even when he is unable to persuade.

By keeping ever in his contemplation this *ideal* of an Advocate, the Student should strive to approach it as nearly as he can. But, to enable him to do so, he must master the Christian Code, not in its letter only, but in its spirit; he must habitually mould his thoughts to its precepts, and try his actions and the actions of others by its decrees. Charity—we do not mean almsgiving, but that Christian charity which should govern the relationship of man to man, and which is shown in frankly conceding to others the same liberty of opinion and action, and the same fair and kindly construction of motives, we desire for ourselves—must be sedulously cultivated by reading, by reflection, and by practice; and, thus learned, the *Law of Kindness* will become imprinted upon his mind, and be the touchstone by which he will be enabled to test the excellence of all human laws, institutions and social observances.

His Moral Training, then, as it can never be perfected, cannot be commenced too soon, nor pursued too sedulously. In that the Advocate must be always a pupil, for the experience of every day of actual practice will serve to confirm his principles



by the frequent illustration of them in action, or by the still stronger evidence of the consequences of their absence, and thus the *virtue* of the youth will grow into the *wisdom* of the man.

## X.

### PRACTICAL MORALS.

PERHAPS it may be permitted to us to suggest a few of the more prominent precepts which, in his Moral Training, the Student should cultivate with peculiar care, as being in most frequent demand amid the active labours of his Profession. We pass over the duties universally recognised, assuming that no reader is ignorant of their obligation. For the present purpose, it is unnecessary to reiterate the Decalogue, or to enlarge upon that sublime summary of our duty to God and man, which the highest authority has delivered to us:—“Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy strength. This is the first and great commandment. And the second is like unto it,—Thou shalt love thy neighbour as thyself. On these two hang all the law and the prophets.”

Placing this foremost in his memory, to throw

a pure, unfailing light upon his pathway through the world, let us turn to the more specific maxims, of special utility to the Advocate, applications of the principles of the great Christian Code, but, perhaps, not immediately so obvious, which, as suggested by practical experience, it may not be amiss briefly to enumerate.

Let, then, the aspirant to the profession of an Advocate sedulously train his mind to the *exercise*, as well as to the recognition, of the following virtues.

Foremost of them, as the foundations of character, as the sources whence spring all the manly virtues, are SELF-RESPECT and its twin brother SELF-RELIANCE.

Wanting these, there never was, and there never will be, *a great man*. It is the remarkable feature of our age, that it is wanting in GREAT MEN. We have in abundance clever men, learned men, wise men, able men; but there are no *great* men. Mind is, by a hot-bed process forced up, or by merciless pruning clipped down, to one dull level of uniformity, and none dares to lift his head higher into the heaven above, or to throw out his arms wider into the world around, than his fellows who want his capacity or his will. Whether the cause be, as some assert, that we read too much and think too little — that the pursuit of material science has made us more *knowing* than *wise*,—certain it is that never were the *highest* intellectual faculties less exercised, and that the decline of individual greatness has kept pace with the decrease in the cultivation of *philosophy*. It may be an argument, if

the change be for the general good; but there can be no question that it is injurious to the characters of individuals. It *may be* better for the whole community that knowledge should be more diffused, and that a few should not stand out prominently among their fellows; but since even that is doubtful, while the individual benefit is certain, and no man enjoys such opportunities for *greatness* as the Advocate, if he possess but the power and the will, we cannot too earnestly exhort the student to cultivate the virtues by which alone greatness is to be attained, in disregard of fashion, in defiance of sneers, in scorn of abuse, in despite of ridicule.

Reader! you ask how you shall do this? The precept is contained in two words—BE YOURSELF.

You are a MAN. Let *that* be your title of honour, than which no higher can be conferred by kings. You have a *mind*, whose freedom is a birthright given by its Creator, whose liberty is in your own keeping, which no power on earth can enslave, without your own consent. If it be fettered, your own hand must forge the chain and fix the lock. If it continue enslaved for another moment, it is your own fault, for you have but *to will* freedom, and it is free again, as it came from its Creator's hands. You have an *organization*, wonderfully framed to accomplish the desires of that mind, through which it communicates with other minds and influences the circle, more or less extensive, amid which it lives and acts. You have a *mission* here, which,—if you could trace it in all its consequences—if you could rightly comprehend how

even a thought of yours may modify the destinies of your own and all coming generations,—would awe you by its magnitude;—a place in the world, with duties attached to it, which you must fill to the best of your ability. You have an *Immortality* for your inheritance—*Divinity* for your parent. And all this is *yours*—is *every man's*,—whatever his family or fortune—whatever his country, or colour, or creed, or race—alike of Lazarus and of Dives. Compared with these incalculable riches, which are *your birthright*, what are the titles, the stars, the ribbons, the ancestries, and the acres, of those who are the favourites of fortune? To liken great things to small, it is as if a Baronetcy were conferred upon a Duke, and he were to deem himself honoured by the title.

We have ventured to remind you of this, not that you should despise social distinctions, nor hold the honours of rank or the advantages of wealth in light esteem, but to show you that your title to *self-respect* is independent of worldly advantages, and to encourage you to *self-reliance*. By recalling what it is to be A MAN, you will take heart, and by virtue of your manhood be bold to stand erect and think for yourself, and to dare to *do* and *utter* what your free thought dictates. As a MAN, you will be *yourself alone*, with only God for your guide and Reason for your rule, and with courage to *form* convictions, and *proclaim* them, and *hold* to them, and *act* upon them.

Be a *genuine* man; genuine in all things; genuine in manner, in speech, in thought, in deed. No

other man that ever existed was like you, and your likeness will never again exist: there is a part assigned to you in the drama of Creation, whose scheme would be imperfect without you. Why, then, strive to *seem* unlike yourself?—For it is only *seeming*. You cannot transform yourself into another being, nor will you succeed in imposing upon your fellows. It is a vice of our age that everybody seeks to appear that which he is *not*. Perhaps it was always so with the many. The same aping of appearances that assumes the shapes of fashion in forms and cant in speech, and produces such moral and intellectual prostration, has ever existed, more or less; but in our time it is a growing evil, and it will demand an extraordinary effort on the part of any person entering upon a career of public life to resist the contagious influence, to preserve intact the consciousness of his individuality as a MAN, and to maintain that self-reliance, without which he cannot approach to *real* greatness.

Even as a matter of prudence, it is best to be *yourself* everywhere and always. *Simplicity* is truest wisdom. What you are, appear. Be not ashamed of aught you cannot help. Strive so to know yourself that you may estimate your capacities rightly, and seek not to *seem* greater or less than you *are*. Society will speedily reduce you to your level, if you rate yourself too highly: it is a mock humility that pretends to self-abasement, and contempt is its just punishment. Never is a man so respectable and so respected as when he is content to appear just what nature and education

have made him, neither better nor worse, wiser nor weaker, richer nor poorer, higher nor lower in rank. Are you of noble birth? Good. It is a proud thing to be the inheritor of a name with which is associated great deeds and unsullied honour: it is the strongest stimulus to transmit that name in its purity to generations to come: it is an advantage of position, the value of which cannot be over estimated, but for which God and man require proportionate services. Are you of humble origin? Good, again. *You* also have cause for an honest pride in *your* ancestry. The lower *their* station, the more *your* merit in having, by your own ability, industry and virtue, worked your way upwards, through the difficulties that throng the path of humble merit, and which to have overcome is a *sure* sign of capacity and perseverance. Dishonour lies only in denial or concealment of the *fact*. It is in itself an honour; and in the practice of life we find it acknowledged. It is only the man who *assumes* an alliance with aristocracy, to which he has no title by birth, who is held in contempt and scorn. The Genuine Man commands the respect of all classes, and, if he be also the Christian Gentleman, he will find that the accident of his birth will not close against him the doors even of the highest in the land. It will be seen hereafter how to the Advocate, beyond all other men, these great virtues of *self-respect* and *self-reliance* are of incalculable advantage.

Possess your mind fully with the precept that "Honesty is the best policy." Hold it, not as a

*sentiment* only, but with the pervading influence of a sincere and solemn *conviction*. It is a maxim in every mouth; but how few make it the inflexible rule of their *conduct*! It is plain that many persons flatter themselves they are honest, if they keep their hands from picking and stealing. But HONESTY means a great deal more than abstinence from *Theft*. It means fair dealing in *every* transaction, public or private; truthfulness of speech; frankness of deportment; readiness to HEAR ALL SIDES of every question, and to judge all men—foes as well as friends—those who differ from us, as well as those who agree with us—by the same standard, meting out to them the same measure of charity in the construction of their motives, their words and acts. There is no term in our language whose meaning has been so cabined and confined as this word *Honesty*. If you profess what you do not believe, assent without conviction, assume what you do not feel, help to deprive a neighbour of his good name by circulating scandal, are overreaching in your dealings, seek your ends by *any indirection*, sacrifice your independence for patronage, prostrate yourself before the powerful, take mean advantages of those in your power, exact from your dependents more than you would claim from your equals, stand strictly upon *legal* rights without regard to the *equity* of your demands; in brief, if in *any* manner you do to your neighbour otherwise than as you would that he should do to you, you are as guilty of *dishonesty* as if you had picked his pocket.



And this is the unfailing test by which you can always try the *honesty* and propriety of any proceeding. Question yourself thus:—"Were we to change places, how should I consider that he *ought* to act towards me?" As the answer is, so act to him. Then seldom, indeed, will you err.

But it is not enough to know how large a *word* is HONESTY; assure yourself also that it is really "*the best policy*," at all times and under all circumstances. It is a lesson slowly learned and very difficult of application; but if there be one thing more than another that experience of the world teaches a man, it is that in *every* condition and transaction of life, equally with individuals and with nations, *Honesty is wisdom as well as virtue*. How tempting soever the promise of present advantage from a contrary course, in the end it will be found an unprofitable bargain. It is a moral law by which the order of things in this world is regulated—a law universal, irresistible, and which is never violated with impunity. The longer we live and the more we observe and reflect, the more profound will be our conviction that, even apart from duty, as a matter of *prudence* and *profit*, it behoves the ADVOCATE to cultivate the strictest HONESTY.

Another virtue to be especially cultivated by the Advocate is MORAL COURAGE. It is a virtue at all times rare, but most rare in this our time of intellectual depression. Rightly to understand the meaning of the term, it is necessary to note accurately the distinction between *Moral* and *Physical* Courage,—two qualities in their sources different,

in their functions unlike, in their objects and modes of action dissimilar,—yet constantly mistaken the one for the other. In formal discourse, as well as in conversation, the term *Courage* is continually applied to acts of mental as to those of physical daring, and they who have not been accustomed to accurate definitions deem them to be the same quality shown in different forms. But slight consideration of facts will prove that they are in truth distinct virtues, which need not co-exist, which are often seen to dwell apart, and therefore require distinct training. Recall to your memory the crowd of distinguished men with whom history and biography have made you acquainted. Observe in how many of them you may trace the utmost *physical daring*, fearlessness of danger, and carelessness of pain, combined with *moral cowardice*; in how many others there was the most exalted *moral courage* in combination with *physical cowardice*. Look among your contemporaries, in the circle of your private acquaintances, and mark the same seeming contradiction. But, in truth, it is not an anomaly—nothing in nature is so;—the objects of your contemplation are neither identical, nor even in alliance. **PHYSICAL COURAGE** is a physical quality; it is shared by man with the animal creation; it is an animal instinct; it is born with him; it is capable of very little education; it is found equally in the savage as in the civilised, or rather more abundantly in the former than in the latter. **MORAL COURAGE** is the faculty of an intellectual being; it is the mental

asserting its supremacy over the animal; it is the sum of all the virtues, at once their product, their representative, their spokesman, and their captain.

In *action*, it is the courage to do and say whatever you deem to be right, without first asking what is the fashion of the moment, what the doctrine of the hour, what the state of the tide of public opinion. Remember this, that TRUTH and RIGHT are independent of times and places; they are the same now as they have been from the beginning and ever will be; nor can any shiftings of opinion change their substance or their forms. Let every man whose lot is cast upon the troubled and ever-shifting sea of public life bear with him, as a perpetual monitor for the confirmation of his resolves, to be repeated whenever he feels his moral courage in the maintenance of his convictions wavering before the hostility of the passing opinion of his day, the memorable saying of Galileo, when his hand, compelled by the Inquisition, signed the declaration that the earth was the stationary centre of our system—" *It moves, for all that.*" So do you, without imitating his weakness in subscribing to error, remembering ever that truth is truth, and right *right*, let men say, or rulers enact, or public opinion prescribe, what they will, fearlessly proclaim your convictions, and face persecution itself with the reflection, " *It moves, for all that.*"

This is but one form of moral courage. It takes more shapes than in a work like this we could attempt even to name. But there are some in which it is likely to present itself to the Advocate

more often than in others, and which, therefore, it will be proper to specify.

There is need of *moral courage*, not only to proclaim the truth, but to confess error. Than this there is nothing more difficult. It is the sublime of virtue. Its difficulty is shown by its rarity. Whether in opinion or in action, how few are magnanimous enough to confess, "I have erred"—"I was wrong;" and yet, why should we be ashamed to avow that we are not exempt from the infirmity of humanity?—Why shrink from the admission that some other man has arrived at more correct conclusions than ourselves?—that we are not, like the angels, faultless? *True greatness consists, not in never falling, but in knowing how to rise again.* It is true that, with the malignity of envy, little minds fasten upon the faults of great ones, and flatter themselves that they have reduced them to their own level by showing that they are not infallible. But *moral courage* will teach us to disregard the Lilliputian darts, and to make our very errors the stepping-stones to improvement. It is impossible to attempt many and great things without falling into some mistakes, and it is easy enough for those who never seek to soar to gratify themselves by counting the falls of those who take flight above them. A man's abilities are truly measured by his *achievements*, and not by his *failures*.

And the Advocate will find many occasions of lesser moment demanding the exercise of his moral courage. In the discharge of his duties he is often

required to defy power, to tell truths that bring upon him the enmity of the influential and the alienation of friendship. Sometimes he stands alone to defend an unpopular cause, with the consciousness that the feelings of his audience are arrayed against him, and that he has to fight their prejudices before he can obtain even a fair hearing for his arguments. Only a high moral courage can sustain his spirit through the difficulties of such a position. Sometimes he is compelled to the yet harder task of wrestling with an impatient Judge, and to labour on, conscious that the Court is against him. Hardest of all is the struggle with a hopeless case, and yet to betray no sign of hopelessness, but to the last to bear up against the adverse tide, with the same unfaltering spirit as if he were advancing to victory. These are occasions for moral courage which can only be understood by those who have endured them.

Another virtue to be sedulously cultivated in the Moral Training of the Advocate is **COMMAND OF TEMPER**. It is of incalculable value to him in the conduct of his business, where there is always so much to ruffle the feelings. Tetchiness is one of the most fatal failings in him who would be an Advocate—most injurious to himself, most disagreeable to all about him. It is a despotism sure to grow under the stimulus of the continual goadings to which it will be subjected in his practice, unless early and sedulously seen, corrected, and controlled by the student. Its presence destroys that cool self-command which is essential to a

rapid and sound judgment, and gives an immense advantage over him to an adversary of calmer head.

Train yourself to command of temper by a resolution, in the first instance, *not to give expression to it*. If it be a natural infirmity, or have been fostered by early indulgence, you will not, by force of your mere will, cease to *feel*; but you may, by stern self-control, shut up your feelings in your own bosom, and forbid them to appear in word, or even in look, or tone. The habit of suppressing the expression of it will in time enable you to subdue the emotion itself. You will cease to take offence at trifles; you will come to receive with a smile provocations that formerly would have made you uncomfortable in yourself and ridiculous to others.

SELF-CONTROL is another virtue which he who would qualify himself to be an Advocate must resolutely cultivate. To command his appetites and his passions is a duty imposed upon him from the commencement of his studentship to the last hour of his professional career. His must be a life of *self-denial*. His youth will be one continual conflict with the temptation of pleasures beckoning without, and nature whispering within. He must forswear the enjoyments that belong to his age and station, to dedicate himself to the library and the lamp. Work, work, work, is his inexorable destiny from early morning far into the night. His recreation must be but an interchange of toils. With the utmost diligence, and no hours wasted, he will scarce be enabled to qualify himself for the office,

before he will be required to undertake some of its duties. The dinner table and the drawing-room, with their excitements and excesses, are fearful foes to severe and continuous study. Few minds can in a moment revert from the pursuit of pleasure to the pursuit of knowledge, and at once concentrate upon the subject that had engrossed them previously the thoughts that had been forced far astray. Thus, to the time actually expended in the dinner or the dance, must be added the loss of the time which it takes to restore the mind to its former condition of calm, and to recall the wandering thoughts to the point at which they had strayed.

To resist these allurements, there is demanded such a power of *self-control* as can only be attained by a resolute will, incessant vigilance, and the practice of it, cultivated as A DUTY, until it becomes a *habit*. But the Student will ask, *how* is he to train himself to the *practice*? It is a question fairly to be put to all who undertake to tell others what they ought *to do*, and which therefore we are not disposed to shrink from answering. We say then to the reader, let him cultivate self-control somewhat after this manner. He must begin by tasking himself daily; let him allot his hours, so that each shall be provided with its work, and let that work be done at its allotted time, and then only. Let him resolve that, whatever the hinderances of any particular times, compensation shall be made for them before the day, or the week, or the month, has expired. To this end, let him note in a diary such

hours as have not seen the performance of their apportioned tasks, and there let them stand as reminiscences of time lost, which he should not rest till he has regained. By this arrangement, not only will the Student learn the value of time, but, having resolved to dedicate himself to his duties (and if he is not prepared to do so he had better at once abandon the pursuit altogether), he will not find any time to be devoted to pleasure, without imposing upon himself additional burdens, which he will soon discover to be ill compensated by the enjoyments of an evening.

So, in after years, if he be successful in his career, his profession will *engross* his existence. Honour and profit will be purchased by perpetual labour; he will be unable to enjoy the wealth he earns; he may not taste of the luxuries, the amusements, scarcely even of the comforts, of life. That purest and dearest of all delights, indulgence in the pleasures of home, the joys of a parent, are forbidden to the Advocate in full practice. Is not self-control needed to enable him so to dedicate his life to his profession? But not so hard is his task as that of the young Student, for he has been, by the habit of long years, moulded to his unnatural existence, until it has ceased to be an effort and become a preference; whereas the Student must subdue his natural inclinations at the time when they are least under control, and deny himself present pleasure, when it wears its most attractive form, for the sake of a reward which is yet future and distant.

SELF-CONTROL is also much demanded in the



*practice* of an Advocate. It has been said that actors and musicians are the most jealous people in the world. Advocates are not far behind them in this particular. The reason is obvious. They all depend entirely upon their *personal* merits for their subsistence and advancement; they are brought into direct *personal* contrast, and hence the two strongest of human passions are subject in them to the incessant stimulus of rivalry, namely, the love of fame and the love of gain. The success of a rival is to them not merely loss of honour but loss of a livelihood, at least a diminution of income, which, in most cases, is equivalent to ruin. Hence the jealousy which is felt in all professions where men immediately compete for a precedence upon which depend their fame and fortunes. The gentlemanly training and habits of the Bar prevent the display of this inevitable emotion in the offensive forms it assumes in professions less educated to self-control; but, nevertheless, it exists, and must ever exist, for it is a part of human nature; and few there are, indeed, who, if they would confess the truth, could refuse to acknowledge that they *have* felt a pang when they have seen influence and interest lifting inferior merit over their heads; friends on whose support they had counted resorting to a rival, only because he *is* a rival, and such-like trials, to which every Advocate is subjected in the earlier years of his career, before he has attained a standing and a repute that give him so unquestioned a superiority that even they who would have retarded his rise are eager to be his supporters, and

crowd about him with their services—when he *has* risen—in spite of them.

That he may command this emotion, even if it cannot be wholly subdued; endure slights and ingrati- tudes, if not without a pang, at least without a murmur, and cease to be ruffled by the vexations and crosses of a calling more exposed to them than perhaps any other, let it be the Student's care to cultivate SELF-CONTROL.

## XI.

### INTELLECTUAL TRAINING.

*Observation, Reading, and Reflection* are the teachers by which the Intellect is trained.

The object of that training is, not alone to fill the mind with facts, but to educate the *faculties*. Good training consists much more in the cultivation of the powers with which God has gifted us, and in stimulating *our own* thoughts, than in saturating the memory with facts, and crowding it with the thoughts of others. It is the office of education, properly understood, to *evoke* rather than to *instil*. Very early experience of the world serves to satisfy the observer that *Knowledge* and *Wisdom* are not always, nor even often, identical.

The Advocate is essentially the *man of action*. His knowledge needs to be extensive; but it will be worse than worthless if he have not also the power promptly to apply it to the demands of the moment. His superiority over other men lies, not

so much in his possession of a larger store of *facts*, as in his capacity for drawing from them such as serve to illustrate the subject he is treating, and in showing in an instant, with the speed of thought, in what they agree and in what they differ. Wanting this faculty of putting it to practical use, all the learning that ever was accumulated within a single head would be of no avail, but rather a burden, to the Advocate.

Hence the necessity for the Student so to conduct his Intellectual Training that every faculty may be stimulated to put forth its powers—that facts may be used as food for reflection—the results of observation and reading reduced to rule and order, and KNOWLEDGE passed through the alembic of his mind to be thence distilled in the precious form of WISDOM.

Two distinct branches of Intellectual Training are required for the Advocate—*General* and *Professional*. Neither can be neglected without ruin to his hopes.

But the twain may and ought to proceed simultaneously. Each will facilitate the other. As we have already stated, we assume that the Student has received all that preliminary instruction which is *called* Education, but which, with the most diligent, forms so insignificant a portion of the training required for the purposes of active life in any pursuit. We assume, for instance, that he is tolerably acquainted with the classics, with the elements of logic and mathematics, and the usual routine of school and college teaching. We propose to take

up the subject of his training at the point where it is most commonly left by masters and tutors to self-teaching, and endeavour to aid him in his research after the best methods for attaining the acquirements requisite to make him an accomplished Advocate. To do this, we propose to consider, first, *the methods* for study, as the ordering of his time, and the habits to be cultivated, and then *the matters* which it behoves him to study, and the books and other appliances by which he may the most readily attain his object.

In this we shall probably, but with great diffidence, differ much from those who have treated of legal studies. But in this work we have proposed to state the results rather of *experience* than of *reading*—to be received, of course, for so much as they are worth, being offered suggestively and not dogmatically. It has appeared to us to be an objection to *all* the Courses of Legal Study we have consulted (we found it, indeed, practically so to be when we had need to resort to them), that they were too vast and too difficult; the authors did not appear to have calculated limits of time or capacity of brain: for the most part they are physically impossible; all the hours of studentship devoted to reading, as a book *should* be read, would not enable the Student to wade through the pages he is directed to peruse, to say nothing of the impracticability of fixing the attention for an unlimited time upon one topic. The aim of the following remarks will be rather to suggest what *can* be done than what it is *desirable* to do: time

will be calculated, and allowance made for rest and recreation; and, in brief, we shall seek to inform those, who may honour these pages by consulting them, what they *may* do, because it is very much what many *have already done*.

## XII.

### HOW TO STUDY.

THE first care of the Student must be an apportionment of his time, so that each hour shall have its allotted duty, and the economising it, so that no minutes shall be wasted. In this lies the secret of the different degrees of work accomplished by different men. One will *do* more in a month than another in a year; and yet both will appear equally busy. The reason is, that one usefully employs every moment, and the other lingers in going to his task, and wastes the periods that intervene between the ending of one occupation and the beginning of the next. In brief, the former *feels* that life is an aggregate of minutes, and seizes them as they pass; the latter may recognise it as a *fact*, but wants the resolution or the firmness of faith to induce him so to *practise*. Seeing how much he has to learn, and how short the time for learning, let him who seeks to become an Advocate begin

his studies with an earnest faith in the value of minutes, and a firm resolve to turn every minute to the best account. Let there be no lingering after recreation, no loitering before work; but let him turn from one to the other as promptly as if he was obeying a command issued from authority. Let him keep his *inclinations* ever subject to his WILL.

He must next proceed to methodize the time he has thus resolved to find—or *make*; and in doing this it will be necessary to bear in mind some rules whereby to regulate the apportionment.

First, he must remember that the capacity for mental labour is limited. Nature is inexorable; she will permit of no abuse of her powers; she will suffer none to steal a march upon her. Violate her laws and punishment follows as surely as the night the day. She prescribes a balance of employment for mind and body—so much for labour, so much for rest—so much for study, and so much for recreation;—if you trespass beyond these limits, the penalty is not only incurred, but exacted, with un pitying sternness. If your powers of work extend to ten or twelve hours in the twenty-four, you cannot filch from rest two more and calculate that you have made a *gain* of fourteen hours in the week.

A little while and then will come depression, inertness of mind, ill health, and instead of two hours *more* than the proper allowance, you will not be able to accomplish the *regular* quantity by two hours; or, if you persist in poring over the books



for the prescribed time, the mind will refuse to receive or retain what the eye conveys to it. Upon the balance of account there will be rather a loss than a gain to you, by trying to do more than your physical powers will permit.

Then it is necessary that you *vary your occupations*. In tendering this advice we are aware that we are dissenting from many and high authorities; but we profess in this treatise to suggest rather the results of *experience* than the recommendations of books. Actual hard study of any one subject cannot be continued for a long time with unflagging attention. The study of the law, especially, which requires every faculty of the mind to be kept upon the stretch, is not capable of being successfully pursued through many *successive* hours. It is a law of the human mind that the impressions made upon any of its overstrained faculties should be imperfectly written, dimly retained, and with difficulty recalled; just as with the eye fixed long and steadily upon any object, however clearly seen at first, as we gaze it grows dim, and gradually fades away from vision, the strained nerve refusing to convey the image painted upon it. Doubtless you will hear among the boasts of your friends large talk of law read for ten, twelve, or even fourteen, hours a day. Be not therefore dismayed, nor deem yourself a laggard, if your labours are more limited. Be assured that such boasts are *not* true, because they are physically *impossible*. No man could read law for so many hours without intermission. The eye may, indeed, be made to wander over the pages;

but the mind could not be informed, and reading consists, not in the survey of *words*, but in the storing up of *facts* in the memory, and pursuing a train of argument for the purpose of arriving at a truth or comprehending a principle.

For these reasons we suggest the adoption of a system which has been found practically advantageous.

In the first place, let the Student keep a diary. It is *essential* to regularity. Let it be ever open upon his table, ready for reminiscence or for record. But we do not mean a diary of thoughts and "trivial fond records," such as are sometimes published after mens' deaths for the gratification of public curiosity, but simply a note-book, having a space for each day, in which the work of that day should be set down at the beginning, and each marked off as it is done. If, at the close of the day, from any unforeseen disturbance, any portion of the allotted tasks remains unperformed, let it be carried to the account for the next day, and thus onward, until, by a little extra exertion, the debt so *due to yourself* shall have been faithfully discharged.

And, in mapping out the day, make ample allowance for rest and for refreshment. Nothing is gained in the end by unduly abbreviating these. Provided you work without wasting a moment in your working hours, you can afford to be liberal in your apportionment of time to exercises of the body and relaxations of the mind. Above all, and at whatever sacrifice, begin your allotment by

devoting *two hours* at the least in each day to active bodily exercise, and give one of these to the early morning and the other to the evening. So with your meals. First consult *health*, without which your studies will be unproductive and your hopes of future success blighted. Thus, then, would stand the account for the day:—

Exercise	.	.	.	2 hours.
Meals and Rest	.	.	.	3 „
Sleep	.	.	.	7 „
For Study	.	.	.	12 „

The allowance for rest and refreshment is here very ample—quite as much as Nature requires for a person of tolerable health and strength. Yet is the time for study sufficient too. The mind could not safely endure more, and it is somewhat singular that, although the hours for refreshment and rest were determined without reference to the hours for study, and these latter were appropriated merely as the residue of the hours not required for the former, the result should show an exactly equal division of the day, as if the equilibrium of health was, in fact, preserved by dedicating one-half of the hours to the *body* and the other half to the *mind*.

The variances in the order of studies should be made with reference to the nature of each. The *profound* should be exchanged for the more superficial; the *grave* for the *gay*; such as engage the *reasoning powers* for those which appeal rather to the *perception* or the *memory*. Natural Science should take its turn with Law; languages with

logic; rhetoric with mathematics, and such like,—an entire change in the faculties employed being in fact a more perfect relief than entire rest. Nor should more than an hour, or an hour and a half, be given at one time to the most profound of the course of studies,—such, for instance, as the reading of the most *difficult* law books. But, inasmuch as a knowledge of the law is the primary object of the Student's labours, law books should *alternate* with almost every other pursuit, save such as may be particularly exhausting. Thus, if he begins with an hour of law, then devotes half an hour to natural science, then another hour to law, then an hour to languages, then to law again, and so forth, he will be enabled, without weariness, and without that flagging of the attention which no effort of the will can conquer, to give from seven to eight hours of each day to law; while, if he were to attempt to pursue his legal reading consecutively, in half that time the impressions would begin to grow dim, memory would refuse to record them, and he would discover, long before the period of seven hours had expired, that although he may have *read*, he has not *learned*, and that half his time has been labour lost.

### XIII.

#### HOW TO READ.

READ slowly and read twice. A book that is worth reading at all is worthy of *careful* reading.

Your daily task should comprise *three* classes of books, all having instruction for their object, but varying in the degree of labour requisite to be bestowed upon them,—namely, books that *inform*, books that *educate*, and *professional* books.

The books that *inform* are those whose primary purpose it is to fill the mind with *facts*,—as history and science. The books that *educate* are those which cultivate the reasoning faculties, and teach the mind to frame *its own* opinions, and evolve *its own* thoughts; such are philosophy, mental and moral, political economy, languages, and polite literature. *Professional* books are such as convey a knowledge of the law, and make an accomplished Lawyer of the accomplished Gentleman; for be it ever borne in mind that the latter is the necessary

substratum of the former, and that the *Gentleman* must *precede* the *Advocate*.

The books that *inform* must be read with some distrust of the unaided memory. All the appliances of art must be brought to its assistance. History should never be read without an atlas and a table of contemporary chronology open by the side, and the eye should trace every locality described, and dates should be fixed in the recollection by noting what other events of moment occurred about the same time in other parts of the world. So should the sciences be studied with the help of diagrams, and drawings, and actual experiments, without which it is almost impossible to understand accurately the principles and processes described.

The books that *educate* should be read after this fashion. Philosophy, ethics, and political economy, whose primary purpose is to teach the mind *how to think*, should be read slowly, a few pages only at one sitting, and twice over, and then, closing the book, the student should set down, in the fewest words and in the closest logical order, the argument of the author. He will thus at the same moment test his understanding of what he has read, and accustom himself to think closely and clearly. If he find that he is unable to state the argument succinctly, let him read again and again until he have mastered it. This may try his patience at first, but aptitude will grow with practice, and ere long the task will be both easy and agreeable. He will begin to enjoy the exercise of his mental powers, and from learning to glean the thoughts of others,

he will soon come to have clear thoughts and opinions of his own.

*Languages* and *Polite Literature*, which have the twofold object of extending the range of ideas and cultivating the power of expression, besides giving a peculiar refinement and grace which nothing else will impart, require only a careful choice of the best words of the best authors, and reading twice or thrice to impress them upon the memory. At the first reading of an eloquent book, the mind is engrossed by its novelty. It must be read a *second* time for the enjoyment of all the elements of beauty or sublimity that unite to produce the admirable whole. A *third* time it must be read for the purpose of *analysis*, to learn the sources of the author's success, that we may learn *his art*. Remember that the Advocate is but an author who *speaks* essays instead of writing them.

*Professional* books must be read after a different fashion. The law is a peculiar study. Every good law book is a collection of principles and cases, the latter adduced to illustrate the former, or rather, perhaps, to show their application to particular states of fact. The Student's object is clearly to comprehend the *principle*, its limits, and the exceptions to it, and these he is often compelled to cviscerate from the cases. The *art* of *reading law* is an aptitude for sucking the marrow of a case,—for discerning the point really decided by it, with little reliance upon the author's citation, and less upon the reporter's marginal note.

This peculiarity of legal studies demands a special

manner of reading. You cannot safely read only one book at a time; you require to have a library within your reach, and the pen ever in your hand. A note-book is indispensable, wherein to *analyse* your author, setting down the divisions of the subject, the *principles* and the deviations from them, and the *names only* of the leading cases by which those principles and deviations were established. The most convenient form for doing this is to make a *threefold* division of the pages of your note-book,—in one column setting down the *divisions* of the subject; in the second the *principles*, with the cases that establish them; in the third the deviations and exceptions, with the cases in like manner. This may appear to the unpractised a tedious method of reading, but it will be found far otherwise, and will vastly abbreviate labour in the end.

There is yet another caution to be observed in reading law. Be not content with the author's citation of a case. If the point for which it is cited be of importance, pause there, and read *the case itself* in the report. The abstract point of law, as stated in a treatise, readily passes out of the memory; the full report, in which the facts and arguments illustrate the judgment, not only makes it more intelligible, but is seldom or never forgotten.

When you have in this manner completed your apportioned task, you should read twice or thrice the contents of your note-book; read them again the next day—the next week—the next month—to refresh your memory and fix the principles and



the cases in your mind, until you can recal them at any moment when any topic relating to them arises in your reading or conversation. Even in after life they will not be useless to you. These notes will be an abstract of the law, to which you will often find it convenient to turn for condensed information, and for the cases not so readily to be found in the more elaborated pages of the original.

Nor is this quite so slow a process as might be supposed from the description of it. It is wonderful how much a man *can* do if only he will devote himself to his work, permit no interruptions, set himself his task and *accomplish* it before he quits it.

With time, as with money, the art of profitable management lies in looking after the small coins. "Take care of your pence and your pounds will take care of themselves." Treasure your *minutes* and you need not trouble yourself about your *months*. Fortunes are composed of farthings. Lives are made up of moments. All great works are completed, not by fits and starts, but by steady, continuous industry. To those who have never given thought to the subject it is a marvel to be told of what may be *done* by the regular daily devotion to any employ of a small portion of time. Say that the Student can read and note one page of an ordinary law-book in *seven* minutes (and that we have found from experience to be about the average of time occupied in the perusal of a law-book in the careful manner above recommended); this yields eight pages in an hour. If six hours in the course of the day be given to the reading of

law, the result is about fifty pages as the produce of the day, three hundred pages of the week, fifteen thousand pages for the year—or about *twenty volumes*!—and this, after allowing a fortnight for absolute rest, and occupying in the work only *six* out of the *twelve* hours of the day which are allotted for study! How trifling the *hour's* proceeds! How grand the *year's* product! What more encouragement to industry can the Student require than these simple *facts*? What more persuasive preachers of perseverance than these plain *figures*?

## XIV.

### WHAT TO READ.

PURSUING the arrangement of the classes of studies indicated above, we proceed to state particularly the subjects that may be most usefully introduced into each, dwelling, of course, with more minuteness upon the course of Professional Studies than upon such as fall under the other divisions. But each will be suggested with a careful calculation of its *practicability*, as well as of its utility to the future Advocate. Nothing will be recommended which it is not within the Student's capacity of mind and time to compass, and from which he will not in after-life reap some advantage. Let us avow that we are perfectly aware of the difficult and delicate nature of this duty; our consciousness that the courses of reading we may suggest will find numerous dissentients—in parts, at least—almost every reader having some favourite author or particular plan of study which he prefers to any other.

Indeed, we offer them with much diffidence, and without dogmatism, as the suggestions of a practical man, rather than as rules prescribed by a pedant. They are not the product of any theory; they are not modelled after any system; they are nothing more nor less than the *actual experiences* of one who has practically reaped the advantage of what he did, and felt the disadvantage of what he had omitted to do. It has been truly said that we learn more by our failures than by our successes; and so, we trust, the reader will profit more by the writer's experience of the *wisdom he has wanted*, than by any *knowledge* he may have been so fortunate as to acquire.

To each class of study we now propose to devote a distinct section.

## XV.

### STUDIES FOR INFORMATION

INFORMATION, varied and extensive, is the *foundation* of intelligence. The Student may be assured that there is no such thing as *useless* knowledge ; occasions for its application will offer often when least anticipated : and even if there be no call for it from without, it will be found of infinite service in moulding thought and guiding judgment. To the Advocate especially, who is daily required to deal with subjects differing the most widely one from another, and with whom it is impossible to anticipate to what strange topic his attention may be suddenly directed, without time to permit of a reading-up for the occasion, an extensive acquaintance with the entire circle of human knowledge is of incalculable value.

First of all, let him master the *principles* and most prominent *facts* of PHYSICAL SCIENCE, beginning with *Astronomy* and ending with *Man*. Let

us not be misunderstood as inculcating any such herculean task as the mastery of the problems and processes by which the facts taught by science are proved, but only an acquaintance with the *general principles* of each of the sciences, and *the laws and truths* that have been discovered. For instance, in *Astronomy*, the Student needs not to pursue the calculations of the astronomers—for that would only be required if he were about to become an Astronomer—but it will suffice that he learn the mechanism of the heavens, as they have revealed it. Thus viewed, the task will not be found so difficult or laborious as at the first glance it might appear. A little reading every day will suffice to carry the Student through the entire course within the period of his probation.

An outline or map of human knowledge will help to indicate the natural order of study, which, if methodically pursued, is not only abbreviated, but impresses itself more thoroughly upon the memory, each subject falling into its proper place, so that it may be readily recalled when wanted.

Seeking some arrangement of knowledge which should be at once simple, natural, and comprehensive, we fell into the following train of thought, which, because of its novelty, we submit with much doubt and deference.

Suppose a man to have been suddenly placed upon this world, with his intellect fully developed, but before any impression had been made upon it through the senses, and then suddenly, with his mind, as it were, a blank page, awakened to

sensation, having the *desire* and the *capacity* to learn:—what would be his proceeding?

He would look round him upon the world without, and the thought would arise in his mind, “*Where* am I?” He would contemplate himself—his form so curious, his feelings so strange and various—and he would ask, “*What* am I?” Then reflection would begin to stir within him, and, reviewing the world without and within, and pondering upon the mystery of existence, he would exclaim, “*Why* am I?”

And the replies to these three questions compose the entire circle of human knowledge, developed in its natural order.

That is the order which we would recommend the Student to pursue.

*Where am I?* Standing upon a ball that rolls in infinite space, a part of a planetary system, itself a part of another system. The relationship of this round world to the rest of creation is taught by *Astronomy*. *Geology* teaches the past history of this ball; *Geography* the aspect of its surface; *Chemistry* and *Mineralogy* its composition; *Botany* the vegetation with which it is clothed; *Natural History* the animal life which swarms upon it; *Meteorology* describes the atmosphere that wraps it round; *Electricity*, *Galvanism*, *Magnetism*, develop the laws of the mysterious fluid which permeates the mass, and is the agent by which all organic changes are produced; *Mechanics*, *Hydrostatics*, and *Hydrodynamics* teach the laws of motion and rest, as the result of gravitation.

All these exist as *facts in nature*, independently of man, and would still be, if *he* were not. Otherwise it is with the sciences that present themselves in answer to the second question.

*What am I?* For this we must first seek the sciences of *Anatomy*, to teach the *mechanism* of the human frame, and *Physiology*, to teach its *functions*.

But the human being is composed of *two* parts—mind and body. *Mental Philosophy* will teach the anatomy and physiology of the *mind*—its structure and functions.

And from the relationship of this mind and this body to the external world proceed certain sciences and arts, which would not be if man were not. Such are *Acoustics*, or the science of sound, and *Optics*, or the science of sight. So, from the manner in which the mind contemplates space proceed the sciences of *Mathematics* and *Geometry*; from its notions of numbers, *Arithmetic*; from its faculty of thought, *Grammar* and *Logic*; from its capacity for speech, *Rhetoric* and *Languages*; from its sense of the beautiful, the *Fine Arts*; from its ingenuity of construction, the *Useful Arts*. In brief, whatever teaches what man *is* and what he *can do*, is comprised in the answer to the question—*What am I?*

The third and grandest query, *Why am I?* conducts at once to the loftiest themes that can engage the human intellect — *Religion*, and *Philosophy*, *Moral* and *Political*. The objects of existence are to discharge certain duties here and to prepare for an eternity hereafter. *Religion* reveals the rela-



tionship of man to his God; *Moral Philosophy*, the relationship of man to man, as individuals; *Political Philosophy*, the duties and relationship of men as members of the community.

In this manner, we believe, are comprehended within these three questions the entire circle of human knowledge. There are many sciences which we have omitted to specify, because they are, in fact, but branches of others, as *Comparative Anatomy*, of *Natural History*, and *Vegetable Physiology* of *Botany*.

Nor is the list really so formidable as it looks. The greater portion of every treatise on science consists of the problems by which the facts stated are proved. It is not necessary for the purpose of the *general* student that he should master more than a knowledge of *the facts* and of the fundamental *principles* of the sciences. He will accept them upon the authority of others, who have made it their business to test the evidence by which they are established.

But, in reading, the Student should carefully resort to diagrams and illustrative engravings, and, wherever it is practicable, make the *experiment* which exhibits the fact asserted, not only to give him habits of close observation, but because there is no teacher like the eye. He should seize every opportunity for attending lectures at which experiments in natural science are shown, and for the inspection of workshops and manufactories where the processes of science are to be witnessed in actual operation. This duty cannot be too earnestly

impressed upon the Student who seeks to become an Advocate.

The portions of the scheme of knowledge which belong to the class of studies at present under consideration are those that *inform*. Those that *educate* will be treated of hereafter.

The books that may be recommended to the Student for the acquisition of natural science are so numerous that merely to name them would be tedious. We will suggest a few only, which we have found in practice to serve the purpose, but with a notification to the reader that doubtless many as good, or better, may be procured.

*Joyce's Scientific Dialogues* is, perhaps, the best book for a beginner, as it is remarkable for the simplicity, yet aptitude, of its illustrations, and its felicity of exposition, so that subjects usually difficult to be understood by a learner are made intelligible even to a child. For the best collection of the *facts* of each of the sciences, *Chambers's Information for the People* may next be read, and then, for the *applications* of them, the various Treatises published in the *Library of Useful Knowledge*. These three works will be found to convey as much knowledge of *science* as is needful for the uses of the Advocate, with a few exceptions, which we proceed to name.

There are some sciences with which the Advocate requires a more intimate acquaintance than with others, because he will be likely to have more frequent occasion to deal with them in his practice. Such are—

*Anatomy and Physiology*, the value of a knowledge of which it would be difficult to exaggerate. Whether his practice call him into the Criminal Courts, or confine him to the Civil Courts, the Advocate will find an acquaintance with the human frame and its functions in continual request, and the possession of it yielding him great advantage over those who are not equally informed. What a mastery does it give him over a cause in which the issue turns upon a medical question! Competent to cope with professional witnesses, and to interpret, as it were, their technicalities to the unlearned jury, he not only *appears* to an immense advantage in the eye of the public, but he is *able* to protect the interests of his client as no other man could do who had not his scientific knowledge. Experience of the advantage resulting from it leads us earnestly to recommend all Students for the profession of an Advocate to make themselves intimately acquainted with *Anatomy and Physiology*. For an introduction, we know of no books so fitted as Dr. Southwood Smith's *Philosophy of Health*, and Dr. Andrew Coombe's *Physiology applied to Education and Health*. But with reading there should be combined the study of the human subject, either in the dissecting-room, or by means of one of those wax models which have been introduced from Florence. A minute's *inspection* will teach more than an hour's *reading*.

*Chemistry*, as being associated with so many subjects of litigation, growing out of patents, manufactures, and such like, should be particularly investigated by the Student.

*Mechanics*, both theoretical and practical, is another science which should be intimately learned by the Advocate, who, in a manufacturing country like this, has so continually to deal with litigation involving questions that appertain to it.

Of *Arithmetic* and *Algebra* he should also possess more than a superficial knowledge.

*Architecture*, among the Fine Arts, should engage particular attention; and among the Useful Arts he should, by inspection, learn the manner of *Book-keeping*, as usually *practised* in a merchant's office.

If ever the reader has frequented the Courts of Law, he will have observed the utter bewilderment commonly occasioned by the production of a trader's account-books;—the blank gaze of perplexity and despair with which counsel turn over the leaves of this, to them, worse than Egyptian scroll; he will have heard the irrelevant examinations and cross-examinations that betray the most entire ignorance of the manner in which the business of the counting-house is conducted, and the consequent ease with which a witness of ordinary sagacity baffles and evades his querist. It is strange, remembering how large a portion of the labours of the Law Courts is connected with mercantile accounts, and the methods of business among traders, that this has never yet formally entered into the education of the Advocate. We trust that our readers will not lose sight of a subject whose importance will become more apparent the more they consider it. But they must remember, also, that it is a knowledge that cannot be obtained from books or mastered in

the study. They must go abroad to seek it, and condescend to be taught (if to be taught *can* ever be deemed a condescension) by the merchant's clerk, and the obliging shopkeeper.

We might enlarge this list, but our object is not to supply a catalogue of books, so much as to indicate the *direction* of studies, and *the nature* of the books and other means by which they may be pursued. The Student will mould them according to his tastes and opportunities.

## XVI.

### STUDIES THAT EDUCATE.

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THE studies next to be described are those, at once the most important and the most neglected, which do not, like the sciences already enumerated, convey knowledge from without, but stimulate the mind to action, and *educate*, that is, *call forth*, the faculties that are within. There is no word so commonly misapplied as the term *Education*, and that confusion of meaning has produced incalculable mischiefs. It is usually employed as synonymous with the term *Instruction*; whereas the two words mean, not merely in strictness of verbal definition, but in *fact*, two processes precisely opposite the one to the other. *Instruction* is the implanting of knowledge; *Education* is the cultivation of the mental faculties: the one is passive, the other active; they may coexist, but they are as frequently found apart. Nothing is more common than a learned man wanting in sense, or a sensible man deficient in learning. For

the ordinary purposes of life, a combination of both is *desirable*; but for the duties of an Advocate, it is absolutely *essential*.

It is *necessary* to the Advocate that he should possess a rapid and vivid flow of ideas, a ready command of words, the faculty of quick and accurate combination of thoughts, with a power of reasoning which should have almost the character of intuition. He must be endowed by Nature with the requisite capacities; but he can only be indebted to long and arduous study for the ability to put forth all the powers of the wondrous instrument with which he has been gifted. Be assured that no natural genius will supply the place of study; the finest capacities will need cultivation; only by long and laborious training can they be brought under subjection to the judgment, and kept to their proper places and uses in intellectual labour.

Foremost of the studies that *educate* is PHILOSOPHY;—a term not very easily defined, but readily understood. Perhaps the derivation of the word will suggest the best description of it. Literally the *Love of Wisdom*, it may be more accurately described as the *Science of Wisdom*. But this is a very rude and imperfect definition, because, under the title of Philosophy, many things are marshalled which do not properly belong to the branch of study now under consideration. For the present purpose of this treatise, it will suffice that the reader understands that we are referring only to that Philosophy which grows out of the existence of the human mind, and its relationship to the

natural and spiritual worlds between which "life hovers like a star." Thus understood, Philosophy offers itself for consideration in *four* divisions:—*Mental Philosophy*, which concerns itself about the nature and faculties of the human mind;—*Moral or Ethical Philosophy*, which regards the duties of the individual man to his fellow-men;—*Political Philosophy*, which investigates the duties of men, in the aggregate form of communities or nations, to themselves and to other nations; and *Spiritual Philosophy*, which seeks to explore the relationship of the soul of man to the existences, not palpable to the bodily senses, that hedge us round about.

We cannot too earnestly commend to the reader the study of these various branches of Philosophy, as a part of his *daily* course of reading. It will be of incalculable service to him, directly, by the wisdom it implants, indirectly, by the habit of reasoning and of reflecting it will foster. More especially is a profound acquaintance with *Mental Philosophy* of inestimable worth to the Advocate. We are so earnest in this exhortation to the Student, because it is a truth which we have *proved*, and not merely a theoretical proposition. Every day makes its value more apparent; and if we were asked what of the studies of our youth had proved most serviceable to us in the practical business of life, we should not hesitate to answer, "The study of Mental Philosophy." There is scarcely a pursuit in which it is not profitable; there is scarcely an occurrence that brings a man into contact with his fellow-men, in which he is not able usefully to apply this know-



ledge. But in the peculiar duties of the Advocate it is in daily,—hourly,—requisition. Whether he examines a witness, or addresses a Jury, or a Judge, his acquaintance with the nature and faculties of the mind is equally in request. It is true that, to some extent, all who mingle with the world do practically acquire a great deal of this knowledge. But we do not propose that the Advocate should content himself with either reading or experience only. He must mingle them, to correct the shortcomings of one by the other; for they do not perform the same functions, nor in their results will they be found alike. *Experience* teaches only the naked *fact*, without the reason for it, and consequently, when it presents itself in other combinations, mere Experience falls into the most grievous mistakes. Nor can it safely predicate anything that has not come within the limited range of its own observation, for, ignorant of the cause, it is unable to calculate the influence of other concurrent circumstances upon the result. So, he who has learned Mental Philosophy in books alone, although familiar with its principles, fails in their practical application, if he have not learned also to study the mind in actual operation, and to note the manner in which the faculties express themselves in the countenance and demeanour. But, for the foundation of his knowledge, let the Student master the *Philosophy of Mind*, as teaching him the nature of the instrument which it will be the future business of his life to operate upon, and whose *Anatomy* and *Physiology* it is as much *his* Profession to be

acquainted with, as it is that of the Physician to know the Anatomy and Physiology of the body.

It is by this that he is enabled, not only to measure his own mind, but to read the minds of others. Familiar with the nature and operations of the mental faculties, he can trace the motives of actions, and account for much that, to others not so well informed, seems wrapt in mystery. Knowing the strength and weaknesses of those whom he desires to influence, he can approach them at the most accessible points and subdue them when they least expect it.

In the examination of witnesses, he is enabled to elicit truth and detect falsehood; in dealing with evidence to the Jury, he is enabled to explain and make intelligible to them motives of action which often give to men's conduct a very different complexion from that which it assumes on the first glance at its outward aspect. These are a few only of the *practical uses* of Mental Philosophy to the Advocate.

To indicate the books in which the study of it may be best pursued is a delicate task, for whatever may be recommended will be sure to find objectors from the sectarianism, that unhappily, even now, is exhibited in relation to this branch of science. Instead of treating it like the other sciences and contributing to a common store of *facts*, with purpose to deduce from *them* principles that may be generally recognised, it is to be lamented that the Philosophers have formed schools, and invented systems, and launched hypotheses,

and sought to make their followers pupils of a master, instead of scholars of nature, precisely as was done formerly with the Physical Sciences, until Bacon rent the chain and substituted *experiment* for hypothesis, and *fact* for conjecture. Mental Science still lags far in the rear, and is, even in this age, shackled by the fetters from which Bacon so long since emancipated Natural Philosophy. Therefore it is impossible to indicate any course of reading which will not offend some devotees of some other of the many systems, whose very existence is proof how little we have really learned. Nevertheless, we must incur that hazard, or leave our design imperfect, and without professing attachment to any particular school, and without acknowledging allegiance to any teacher or system, we name the books that, from *experience*, we have found to be best calculated to accomplish the Student in Mental Philosophy.

For a beginning, we would recommend Dr. Thomas Browne's *Lectures on the Philosophy of the Human Mind*; to be read, not because his *system* is true—for it is *not*—but because his descriptions of the particular faculties and their operations are so graphic, and his style is so eloquent and fascinating, winning the reader to love the science he expounds, and implanting a taste for the pursuit of it, which, thus kindled, is not likely again to decline.

Next, we would recommend a patient and attentive perusal of *Combe's Phrenology*. But be it understood that we do so without expressing either assent to or dissent from the peculiar theory of

mind taught by the phrenologists. Nor is it *necessary* that the reader should form any opinion of his own upon that moot question. It is not for *this* that we desire it to be read, but as presenting the best analysis of the faculties of the mind and their functions which has yet been propounded. It should be observed that this has no necessary connection with the system out of which it has grown. The *doctrine* of phrenology is, that the brain is the organ of the mind, that it is a congeries of organs, each having a distinct function, with powers regulated by size and consequently apparent in the form of the skull. Now it is obvious that all *this* may be false in fact, without in any manner affecting the divisions into which the phrenologists, for the purposes of study, have classified the mental faculties. For instance, whether it be true or false that there is a part of the brain dedicated to the faculty of reasoning, or of number, and that this is visible in an increased bulk of the brain in that part, it is certain and will be admitted by all, that the mind does *in fact* possess the faculties of number and reason, and that they naturally vary in power in different persons. So may the entire theory of *phrenology* be rejected, and yet its admirable analysis of the mental faculties and their functions will remain as true descriptions of the human mind, an intimate acquaintance with which will be found of incalculable utility to the Advocate in his practice. It requires only a little attention to sever the *indubitable* portion of Mr. Combe's work from that which must be admitted by

all impartial persons to be—as yet, at least—questionable and unproved.

The perusal of Locke and Stewart may follow, but rather as exercises for the thought than as guides to be implicitly accepted.

*Moral Philosophy* should form another branch of the education of the Advocate. It teaches the duties of man, as an individual, to his fellow-men. Such portions of it as peculiarly concern the Advocate have been already specifically examined in the course of our review of his moral training, and therefore it will be unnecessary to do more in this place than recommend the attentive perusal of Paley's *Moral Philosophy*, as, perhaps, the book that may best be consulted for a systematic exposition of the subject. But it should be read in combination with Combe's *Essay on the Constitution of Man*, otherwise the Student may fall into serious errors in his estimate of the obligations of morality. From the latter he will learn that the moral law is no deduction of reason, but that it is written by the finger of God upon the heart of man; that it is immutable and eternal, and that its obligations are enforced by punishments as certain as those which follow the violation of Nature's physical or organic laws.

*Political Philosophy* has special claims upon the attention of the Law-Student, and should occupy a proportionate space in the programme of his labours. It properly embraces, not only the science of Government, but the sciences of *Jurisprudence* and of *Political Economy*. There is no branch of

these that is not of *practical utility* to the Advocate, even in the immediate duties of his Profession, independently of the recollection, he ought ever to keep before him that success in that Profession conducts invariably to a place in the Legislature, and consequently to the discharge of functions to which an extensive knowledge of these sciences is indispensable, if he would be an active and useful public servant. Therefore we make no apology for dwelling upon them at greater length than at the first glance their apparently slight connection with the education of a Lawyer would seem to justify.

*History* presents itself under two aspects, and will come to be ranged under the studies that belong to *instruction*, or those that belong to *education*, according to its kind. There is History, or rather that which passes by the name of History, which professes simply to narrate the principal facts in the life of a nation, as they are found in tradition or record, without the exercise of reason to sift the false from the true, and with no effort to make a practical use of the lessons of the past to form the wisdom of the present. There is also History, *properly so termed*, which investigates probabilities and weighs evidence in its review, and, as it goes along, traces events to their causes, discovering thus the moral laws which Providence has prescribed equally to nations and to individuals; finding in the errors of old times rules for the better regulation of our own era; deducing lessons of statesmanship, the principles of national economy, the sources of a people's greatness or decline, and

thence the code of laws by which happiness is best promoted, and the forms of government that have proved in operation to be the most conducive to the general well-being. This is History proper, and it has been aptly described as *Philosophy teaching by example*. This is the manner in which it should be studied by the Advocate, not only for the extent and utility of the knowledge it imparts, but for the stimulus it gives to his intellectual powers, and the habits it cannot fail to form of reflection, of caution in the acceptance of assertion in the application of one state of facts to another, of ready reasoning, of quick perception of distinctions and similitudes, and of estimating the worth of testimony.

We assume that the Student has already, in his school and college training, acquired at least a general knowledge of the history of the world and of the nations that have flourished in it; that he is not very deficient in Chronology; that he is acquainted with the principal events, not only in their order in each country, but in their relationship to one another in contemporaneous history. It will not be necessary, therefore, for the present purpose, to invite him to begin his researches afresh. The histories of the ancient world he is sure to be familiar with; but it is questionable, as education is conducted in England, whether he possesses more than a mere chronological acquaintance with *modern* history. But, as an exercise for his reasoning powers, and to cultivate the habit of sifting and weighing testimony before he accepts it as truth and makes it the foundation either of opinion or

action, we would strenuously urge him to a slow and careful perusal of Niebuhr's *History of Rome* and Grote's *History of Greece*. He cannot too soon learn the disagreeable, but necessary, lesson, how much of that which he has been wont to receive with implicit deference as unquestioned and unquestionable truth is really but the fiction of the poet or the imposition of the priest,—how very small is our actual information as to the history of the times that preceded the discovery of the art of printing,—how dubious is much even of that which the press has preserved.

*Modern History*, as being the history of the origin and progress of the existing state of society, its governments, its ideas, its manners, its civilisation, and therefore of vastly more value to all who are to mingle in the business of real life, should occupy a large space in the studies of the Advocate. He should read slowly, with maps before him and pen in hand, to note dates and contemporaneous events, the best history of each of the nations that now occupy the face of the earth, beginning with his own.

The *History of England* cannot be learned from one book, nor ought it to be studied thus narrowly. Every historian has his own bias, political or sectarian, and colours his narrative according to the hues of his own opinions or prejudices. The judicious Student will, therefore, sedulously endeavour to avoid the danger of partial impressions, by reading the works of those who are most opposite in their views, and drawing his own conclusions



from the comparison. As the best foundation for the study of English History, as the largest and most accurate collection of its *facts*, and as presenting the history of *the people*, and not merely of Kings and Courts, we would strongly commend *The Pictorial History of England*, published by Mr. Knight. It is beyond compare the most interesting and instructive book of its class which our literature possesses. This read, it would be well to peruse parts of *Hume*, for the sake of his style; of *Hallam*, for the sake of his philosophy; the entire of *Macaulay*, unrivalled as a revivification of the past, and portions of *Lingard*, as showing the aspect under which the same events present themselves to a mind of an opposite bias, and for the new light which undoubtedly his investigations have thrown upon many portions of our annals which party and sect had perverted for their own purposes. As further illustrative of these more formal narratives, the Student may with advantage read some of the best of the biographies with which the libraries abound. Lord Campbell's *Lives of the Chancellors* should occupy a prominent place, as having for him a double interest. Mr. Foster's *Life of Cardinal Wolsey*, and his *Lives of British Statesmen*, in the *Cabinet Cyclopædia*, may be consulted with great advantage, as may also Miss Strickland's *Lives of the Queens*, and Mr. Townsend's *Lives of the Judges*.

A philosophical *History of England*, composed with purpose to apply the lessons of the past to the instruction of the present, yet remains to be written.

Our literature can boast of none such, for England is not fruitful of Philosophers.

In like manner, *one* good history, at least, of *each* of the other nations should be read; but the choice may be left to the Student.

Besides the formal histories, there are some works on the *Philosophy of History* which should be perused with particular attention. Foremost among them we would place Guizot's *Lectures on Civilization*; Schlegel, also, may be consulted with advantage.

And, in addition to the histories of nations, there are some histories devoted to particular epochs which should not be overlooked. Of these, the greatest in itself and in its effects upon the present condition of the world is the French Revolution. With that, in all its various aspects, he who is ever likely to take part in the politics of his own time cannot too familiarly acquaint himself. Not only should Alison's *History* be read, but he should consult the narratives of Lamartine in his *History of the Girondists*, of Thiers in his *History of the Consulate and the Empire*, and of Carlyle, in his *History of the Revolution*. Our own Revolution should also receive separate study.

Such a programme may appear formidable, but it is not so in reality. The same steady, continuous industry, devoting to it a determinate portion of each day, and a resolve that the close of every week shall count a certain number of pages mastered, will help the reader through an array of volumes most alarming in a group. Remember that twenty-five pages per day are one hundred and

fifty pages per week; and that a year would thus enable you to read *seventeen volumes*, with the daily application of half an hour at the utmost. Five years will place you in possession of all that is most requisite to be known of history; and that, as a collection of facts as well as a storehouse of philosophy, makes you the possessor of a store of practical wisdom which, in every stage of your career, will be found of infinite service to you. Is not the advantage well worth the labour of the acquisition? Could half an hour a day for five years be more profitably or more pleasantly employed?

Next after an acquaintance with the *facts* of History should come its *Philosophy*; and especially that portion of it which relates to the Constitution, Government and Laws of each particular nation. Perhaps, with all its faults, the best book on that topic which our language possesses is Lord Brougham's *Political Philosophy*. The *Philosophy of History* should be succeeded by the study of *Political Economy*, than which there is none more useful to all who mingle with the business of the world, and to the Advocate especially, inasmuch as it teaches habits of close attention, of caution, of calculation, and of looking for the truth beneath the surfaces of things. Adam Smith's *Wealth of Nations* should form the foundation of this study, to be followed by the works of M'Culloch and Mill, or such of the best authorities as the reader may have inclination or leisure to consult, especially the remarkable contributions of Colonel Thompson in the *Westminster Review*.

Then will the Student be prepared to enter upon the difficult but deeply interesting science of *Jurisprudence*, which he must pursue as sedulously as time will permit, because it will be directly useful to him in the acquisition of Positive Law, which constitutes strictly his Professional Education.

But that the scheme we are suggesting may be more clearly comprehended, it will perhaps be convenient to state the sense in which we are using certain of the terms that will be found here.

Under the title of *Political Philosophy* we include all the sciences that combine to constitute the *Science of Government*. The art of Statesmanship is the result of very various knowledge. It must be based on an accurate acquaintance with the Philosophy of the Human Mind; upon an extensive knowledge of the History of Man; upon an accurate understanding of the proper province of Law; upon profound study of the sciences of Political Economy and of Jurisprudence.

By the term of *Jurisprudence* we intend the entire *Science of Law-making*. It teaches us Law *as it ought to be*, not Law *as it is*. The proper subjects for Legislation, the manner of dealing with them, how laws should be framed and how administered—these are comprehended in the *Science of Jurisprudence*. But it does not concern itself, as it is often supposed to do, with Law *as it is*, other than for the purpose of illustration and by way of proof, in the course of argument. The business of *the Jurist* is to teach us what laws *ought to be*, and *how to construct* them. The business of *the*

*Lawyer* is to *expound* and *administer* them after the Jurist has made them. For the present, we are considering only the studies necessary to give to the Advocate, who should be *both* Jurist and Lawyer, a knowledge of the *Science of Jurisprudence*.

The first step is to assure himself what are the proper boundaries of legislation, for it is the neglect of this that has produced the greater portion of the mischiefs that have resulted to mankind, and still do result, from bad government. History is full of the fearful consequences of thus trespassing beyond the boundaries of Jurisprudence, and attempting, often with the most benevolent motives, to regulate by Law matters with which Law has no concern. Three-fourths of the labours of modern legislatures have been employed in undoing what had been foolishly done by their predecessors, acting in ignorance or disregard of the limits of their functions. Nor is the evil yet quite stayed. At home we daily see attempts made by the less informed, both in and out of Parliament, to stretch the law beyond its province, and abroad we have beheld the same mischievous propensity in active operation and producing the multiplied miseries that inevitably result from it. The only security against the repetition of the mischief is, that all who are likely to take part in the business of legislation should early inform themselves what are its proper boundaries, and then, having *principles* for their guide, they will be enabled to withstand the temptations to trespass beyond those boundaries which are continually offered under the alluring

promise of some seeming present advantage, without calculation of the cost of future evil at which all departures from principle are inevitably purchased.

The book from which this most valuable knowledge may be best gathered, and which, therefore, should be first read, is Austin's *Province of Jurisprudence Defined*—a work of great utility as a fine exercise for the mind, independently of the knowledge it conveys of the important subject to which it is devoted.

This may be followed by such of the works of Bentham as relate to Jurisprudence, and which, although often extravagant in their conclusions, contain, upon the whole, the most valuable collection of the principles of that science, and suggestions for their application, which the world possesses. Mr. Arthur Symons's little book on the *Mechanics of Law-making* may also be read with great advantage, as may many of the articles on the same subject which will be found scattered through the early volumes of the *Westminster Review*.

But the severer studies of Philosophy should be mingled with those which appeal to other than the reasoning faculties,—not, however, for the sake of relaxation, so much as because it is right to cultivate *all* the intellectual faculties, and to improve to the utmost that magnificent instrument, the mind, with which we are gifted, for the glory of God, for the benefit of our fellow-creatures, and for our own honour and happiness. The opinion that too much prevails in relation to Philosophy, that it is a pursuit of no practical utility, that it is abstract,

dreamy, dry, and repulsive, fitted only for the retirement of the library, but out of place in the business and realities of every-day life, is a prejudice which it is the duty of all who have any influence with the reading public to endeavour to dispel, for nothing can be more false in fact. Philosophy, as it is now understood, is pre-eminently a *practical* pursuit; it is to be learned in the busy world at least as much as in the retirement of the study. The mind, indeed, must *reflect* in solitude, but its materials for reflection must be obtained in society; from personal intercourse with men; from personal knowledge of affairs; from personal inspection of *mind in action*; for, if its information be derived from books alone, it will fall into the most fatal errors. Mental Philosophy can be acquired *only* by *observation* of the manner in which the various faculties combine to influence the conduct of men, and their manifestations can only be correctly read after long practice. Contemplation of the actual world can alone assure us of the great truth of Moral Philosophy, that nature has her moral laws, to which she enforces obedience by affixing to every breach of them punishment, which follows as certainly as the shadow pursues the sun, and thus only can the maxim that Honesty is the best Policy become a firm *conviction*. Still more is *Political Philosophy* to be learned in the streets, in the mart, and in the newspapers; a mere closet acquaintance with it is worse than worthless—for it is the science, not alone, as it is termed, of the wealth of nations, but it is the rule of economy

for individuals, teaching them how to live and thrive; it is, in fact, the Philosophy of meat, drink, washing and lodging.

These practical uses, and the interest it thus gives to every word and act of our fellow-men, and to every movement and phase of society, making us observers of, and therefore sharers in, the pursuits, feelings, pleasures, and pains of all men, from the highest to the lowest, tend to create in us a large sympathy with our fellow creatures, which exercises the most wholesome influence upon our own temper and turn of thought. Thence springs true philanthropy: not the wretched cant of it which is the fashion of our time, but that genuine fellow-feeling which, recognising as a fact that "we have all of us one human heart" is the parent of *Charity*;—the Charity of the Bible, which consists, not only in giving from superfluities to those who ask, but the rarer charity that excuses faults, forgives wrongs, acknowledges virtues in opponents, admits that worth is of no party nor sect, and that another may differ from us in religious or political opinion, and yet be as honest and as estimable as ourselves.

Can that be a dry and dull study which is thus to be pursued where "men most do congregate," and which concerns itself about all that is most interesting and important in relation to man's welfare and progress here, and seeks even to penetrate the veil of the future that awaits him? Is it possible that *any* occupation could offer *more* attractions?

Let, then, the Law Student, purposing to become an Advocate, whose occupation will hourly demand,



not merely the knowledge which it teaches, but the mental activity and power which it fosters, begin betimes the pursuit of *mental*, *moral*, and *political philosophy*, mingling the study of the master-minds who have recorded their thoughts upon it in books with his own personal observation of the world. This, in fact, is the province of *true* philosophy; for what, after all, is this formidable learning but the *Science of Man*, viewed under his twofold aspect as an individual and as a member of society?

We have dwelt thus long and urgently upon this topic, because it is one whose value is, we fear, very imperfectly understood, upon which great prejudices prevail, which has been, and still is, too much neglected in this country, but which the Advocate would do well to cultivate, as a branch of his education, of the worth of which in after life he will become more and more sensible, as the experience of every day will prove to him its infinite utility in the practice of his Profession, and how great advantages it gives him over those who have not made the same ample preparation.

Throughout the long and arduous course of study which we have indicated as necessary to form an accomplished Advocate, *Polite Literature* should not be neglected. It will not suffice that he possess *knowledge*, and that his mind be thronged with *thoughts*; he must enjoy the faculty of readily, and in a pleasing form, conveying that knowledge and those thoughts to others. To this end he must cultivate *taste*, quicken his perceptions of the graceful and the beautiful, and make himself

familiar with the aptest *words* and the most pleasing manner of *expression*. This branch of his education, inferior in importance to none other, he may combine with needful relaxation from severer toils. We have already urged the necessity for *variety* of employments, because the mind will not endure continuous attention to one subject without danger to its health; and it was intimated that the hardest tasks of the day should be succeeded by occupations of an opposite kind, so as to give entire rest to the faculties that have been toiling, by diverting the attention and engaging faculties that have been idle. A change of employment does, in truth, give more perfect relaxation and rest than absolute idleness. Hence it is well to seek an employ for those requisite periods of relief, which, while diverting the thoughts, shall turn the moments of diversion to profit. Polite Literature accomplishes this object.

Daily, then, and *more than once in each day*—indeed, so often as you feel your attention flagging and the mind halting behind the eye, as it passes over the pages that demand a memory of minute facts and the pursuit of intricate threads of argument, do you seek relief in some volume of poetry, or fiction, or graceful essay, or eloquent discourse. Of these let there be ever at hand in your study a choice assemblage, from which you may select, according to the mood of the moment, a companion either cheerful or grave, humorous or sentimental. *Read aloud*, if possible, although but to your chamber-walls, for thus you will read more slowly,

and the necessity for giving the proper emphasis to the words will compel you to a comprehension of the author's ideas. Besides, one of the principal objects of this sort of reading is to place at your command ready and apt expressions; and the words that enter through eye and ear at once become more firmly fixed upon the memory than if received through one sense alone. But this is not all the advantage that results from the combination of such books with your more formal studies. The reading of all works that appeal only to the perceptive and reasoning faculties, and especially of technical works, and beyond all others of law-books, tends insensibly, but surely, by the force of habit and imitation, to mould the Student's mind to that angularity and hardness so disagreeable in society, and induces the dogmatism that makes the pedant, while to the Student of law it superadds that most odious form of pedantry—a *professional* phraseology.

This tendency of thoughts and words to run in one accustomed track can only be subdued by continual counteraction. It must not be permitted to grow into a habit. The regularity of learned labour, which is the parent of pedantry, should be as regularly disturbed by the interposition of reading that will cultivate the imagination and the sentiments. By cherishing the sense of the sublime and beautiful, it will insensibly impart grace to manner, refinement to thought, eloquence to speech;—accomplishments without which the profoundest learning loses half its value, and the wisest man

half his usefulness. It is a truth, however unsatisfactory, that the *manner* is more esteemed by the world than the *matter*. Nay, it is difficult, even for the most critical, not to listen with more pleasure and attention to an unsubstantial discourse gracefully delivered, than to the speech most full of wisdom and learning that is uttered in coarse phrases, with ungainly action, and in harsh tones, or in that which is even worse—in the formal, correct, logical, and dry phraseology, and with the dogmatic manner, of the schoolman, who supposes that the rest of mankind, like himself, are to be moved only by a syllogism and an authority.

Of *Poetry* let the Student procure an ample store of all countries—of all ages. It is a vulgar and ignorant prejudice that represents poetry as frivolous and useless. To produce it is the loftiest effort of human intelligence, and its perusal awakens the noblest faculties of the mind. Poetry is the appeal from our divine against our human nature, startling us from too entire devotion to the pursuits of pleasure or profit, and recalling our thoughts to the duties that belong to us here and the destinies that are promised to us hereafter. If it do not directly minister to the purposes of wordly advancement, it profits us indirectly by the sense of the becoming which it imparts, by its humanising influences, by the indefinable but unmistakable impress of a cultivated mind which it stamps upon the face, the voice, the manner, and which is of itself a letter of recommendation to the bearer.

It will suffice merely to name some of those poets

which should be within the Student's reach, for perusal in the moments of recreation that should divide his severer studies. Others may be added according to his taste.

Foremost for the present purpose of *education* we place the poets who *suggest* thought, conducting us, as it were, to a height and then bidding us contemplate the prospect whose more prominent features only they attempt to describe. These are the *philosophical poets*; and the best of them belong to our own time. *Wordsworth* should hold the highest place in the Student's catalogue, as well for the purity and transparency of his language, as for the sublimity of his ideas. He has been well termed the Priest of Nature ; it might be added that he is also the Prophet of Humanity. It is impossible to hold habitual intercourse with his works without feeling the heart expand, the intellect taking clearer and wider prospects of creation, without a keener sense of duty and a more ardent desire to perform it faithfully. With him combine the poetry of *Coleridge*, less simply grand and more imaginative, but as profoundly *true*.

Then *Byron*, for his passionate thoughts and burning words, so apt for the expression of emotion, and therefore so valuable to an orator; *Southey*, for his pure English idiom; *Moore*, for the sparkling brilliancy of his words and his exquisitely graceful ideas, imparting a more delicate sense of grace and beauty to the reader; *Milton*, for his grandeur of conception and the classic dignity of his composition—the most majestic discourses that ever

proceeded from human pen ; *Scott*, for his picturesqueness, which, as we shall have occasion to show hereafter, is so important an element in successful oratory; *Crabbe*, for his vigorous descriptions of character; *Shelley*, for his refinement of thought and language; *Pope*, for his harmony of words:—all these, and such others as individual taste may incline unto, should be within the Student's reach, portions of one or of some of them to be read *daily*, at the intervals of severer toil. Nor should this wholesome practice end with the novitiate, but be sedulously pursued *through life*, even amid the most distracting claims of business, for *then*, indeed, it is that there is most need to cherish the divinity that is in us—to withdraw the thoughts for a time to loftier themes than briefs and law-books, and to remind us continually that we do *not* live for law alone. Nothing will so surely effect this as the habitual reading of the best *Poetry*.

With the *Drama*, in like manner, there should be a daily intercourse; at least, with *Shakspeare*—in himself a world of wisdom, wit and poetry furnishing the memory with stores of thought, always apt and always acceptable, because always intelligible.

Nor should *Fiction* be neglected. A good novel is *Philosophy in practice*. It is like a book of travels; it exhibits man in spheres of action beyond the immediate circle of your own observation, and therefore, next to society itself, it is most instructive. It is impossible that any man, having other occupations, could mingle personally with all the

social circles painted in the best novels. Hence their utility. They give him a knowledge he could not otherwise obtain, and that of a kind the most practically useful to him—the knowledge of *man* and of *society*. Nor is the *Historical Romance* without its uses. Not only does it convey to the mind a more distinct idea than does formal history of the times treated of, and of the great men who flourished in them, presenting the actors as in life, and making the past as present, so that the dead seem to live, and move, and speak, before us, and we think of them as beings whom we have known personally, and not by report alone; but the *Historical Romance* yields this further advantage to the Advocate, that it cultivates his *powers of description*, than which, next to power of argument, none is so essential to his success. It gives him a graphic style; accustoms him to look at things in their most picturesque aspect, and teaches him how he can most vividly paint them upon the minds of others. Of these, the Romances of *Scott* hold the highest place; and after them, though at long distance, come those of *James*, and of *Cooper*.

Among the works which combine recreation with education, *the Essayists* should have a place. They supply and suggest thoughts, they induce a habit of reflection, they make the process of argument familiar, and show how logic can be made to assume a graceful and even attractive aspect; they open new truths, and indicate the direction in which thought may be best employed. The Essays of Addison in *The Spectator*,—the masterly produc-

tions of Hazlitt,—the quiet humour of Charles Lamb, and the wit of Sidney Smith, are the best specimens of this class of reading; but others will be found abundantly in our periodical literature, and especially we would recommend the *Selections from the Edinburgh Review*, by Mr. Cross, as a mine of intellectual wealth, and as containing specimens of writing equal to anything that any language or any age can boast.

Combined with these book studies, it will be necessary to keep pace with the current of contemporary events and intelligence, by regular intercourse with the newspapers and reviews of the day. A very little neglect of these will speedily leave the Student far in the rear, and give him the appearance of one who is behind his age, and therefore incompetent to take part in its affairs. Nor would such an impression be altogether a prejudice. Useful as is our knowledge of the past, it is mainly to correct our views of the present that it is practically serviceable. A man who is well informed on all that is passing about him may go through the world successfully, and even with credit; but he who is ignorant of the people, the prevalent ideas and events, the doings and sayings, of his own times, is utterly unfitted for intercourse with his fellow men—incompetent to advise or act with them, and should not venture beyond the door of his library, however profoundly learned he may be in the doings and sayings of an extinct era. Hence it is that we so often find men learned but *not* wise, and wise but *not* learned. Be it the care of the reader to make himself both learned *and* wise.



*Daily* perusal of a newspaper is not needful, and it is too dangerous a temptation to trespass upon time, otherwise claimed, for any cautious Student to indulge in it. A weekly newspaper—any one of those which condense with so much ability the news of the week—will amply suffice to secure the object indicated above, so far as respects the political and social history of the world. But to this must be added the regular perusal of one of the literary journals, which may inform him also of what *mind* is doing throughout the world, and of the progress of literature, art, and science, which exercise even a greater influence than do statesmen over the destinies of our race : for the former implant the ideas which the latter embody into constitutions and laws.

Add to these, as studies of style merely, occasional passages from the prose works of Swift, Dryden, Jeremy Taylor, Cobbett, and Southey, the great masters of the *English* language, and there will be a tolerably complete course of *general reading*, to be interspersed among the more formal studies.

But, as this may appear a very formidable list, it should be observed that we do not suggest the reading of the *entire* works of any of these authors. It will suffice to take them indiscriminately, and open them at almost any page, and read for the allotted time, and lay them down again at the close of any section, according to the mood of the moment.

And this will complete our review of the *Studies that Educate*.

## XVII.

### PROFESSIONAL STUDIES.

BEFORE we enter upon the consideration of the course of Professional Study which experience has suggested as practically useful for the Advocate, it will be convenient to make a few general observations as to the principles upon which it will be framed.

We have consulted almost every work of repute that has professed to aid the Law Student by indicating to him a course of reading. They were sought for the sake of assistance and not for the purpose of criticism; when the desire to obtain the best teacher was strong within us, when unlimited time was at our command, and labour little regarded. But, with all these advantages, the task prescribed by the authors who had undertaken to be our guides to the learning of the law presented a most formidable front. Our courage was cooled by the awful array of books which, we were gravely assured,

it was absolutely necessary that we should read, learn, and inwardly digest, before we could venture upon the practice of our Profession. Having a calculating turn of mind, and a very provoking habit of trying assertions by the test of figures, we remember that we set ourselves to estimate the *possibilities* of the prescribed courses of study. It will not be necessary to state the entire process, but the result was, that, according to the scheme of our considerate teachers, it would be necessary to read, as law-books can only be read with benefit, for *twelve hours per day*, Sundays included, for *ten years*, in order to accomplish the course of study which they had recommended!

The truth is, that too often they who have undertaken the duty of advising the Law Student in his reading have thought more of themselves than of their pupils. As if they hoped to receive credit for having *done* all that they recommend to others, and with design to display a most extensive acquaintance with law and law books, they have set forth such a catalogue of volumes to be read, and which they would have the Student believe to be essential to his qualification, that they deter many from attempting the Herculean task, and they who boldly venture a beginning speedily find themselves compelled to abandon their guide and seek unaided a more practicable path.

With the memory of this personal experience, we will endeavour to suggest a course of reading which shall at least possess the advantage of being *possible* and *practicable*. Doubtless other better

ones might be designed, and many improvements might be introduced into this one. Some will complain of certain omissions, others of others; the relative value of different branches of study will be disputed, according to the accident which has made one more prominent than the rest in the practice of individual readers. But we have sought to lay aside personal prejudices, to exercise an unbiassed choice, and to correct experience by reflection and observation.

It must be remembered that we are here considering only what should be the Professional Studies of *the Advocate* in particular, for every branch of the Profession needs its own special training and reading. There are certain parts of the law with which it behoves *all* lawyers to be well acquainted. But there are other departments of it which require more or less of study, according to the destination of the Student. The Advocate, the Conveyancer, the Equity Counsel, the Special Pleader, the Attorney, needs each one a different knowledge. To the requirements of *the Advocate* is the present inquiry directed.

Another rule has regulated the following selection. It is made with cautious reference to the *capabilities* of the Student, and therefore it is strictly limited to his actual *necessities*. The test applied to every subject recommended, and the proportion of time allotted to it, was this: is it *indispensable*?—for, if it be not so, there is so much to be learned which *cannot* be dispensed with that we have preferred to dismiss the former from a place in a course

of reading which is intended to be strictly practical, and to be constructed with reference rather to the requirements of the reader than the aspirations of the author. In brief, recalling what were our own needs when first entering upon Professional training, what, after many trials and disappointments, we found to be the most satisfactory study at the time, and which has proved to be the most useful in after life, we have endeavoured to suggest such a course of reading as we should have welcomed gratefully had it been proposed to ourselves, when we *were*, as our Student readers *are*, bewildered gazers upon the intricate and thorny domain of the law which it was our destiny to explore.

We have already described how Law should be read; with pen ever in hand, note-book spread open before the reader, and a Law Dictionary by his side.

There are two classes of law books,—to wit, *Treatises*, and *Books of Practice*; the former almost exclusively teaching *the Law*, and the latter *the practice* of it. The distinction is not a very strict one, for it rarely happens but that something of the one is unavoidably mingled with the other. But nevertheless there is a manifest difference between these two classes of books, which will be readily recognised by every practitioner, however difficult to define with accuracy.

Every *Treatise on Law* that deserves attention consists of the following parts:—1. The *principle*, with the authorities from which it is deduced,

whether statute law or cases. 2. The *exceptions* to or *variations* from the principle, accompanied, in like manner, by the authorities establishing them.

Every *Book of Practice*, rationally constructed, sets forth:—1. The *rule*, with the authorities for it. 2. The *exceptions*, with the authorities for them. 3. The *forms* of the processes, &c. The method of arrangement usually is, and always *should* be, to describe the course to be pursued, in the order of occurrence, according to the customary progress of the particular matter; as, in the Practice of the Common Law Courts, from the Instructions to sue to Execution; or, in the Practice of Wills, from the first giving of the Instructions to the final distribution of the Estate.

In reading a Treatise on Law, the Student should first slowly peruse a section; then, in his note-book, which should be ruled with a *treble* margin, he should, within the *first* margin, note *the principle*, and this, if possible, in fewer words than are found in the treatise. Then, within the *second* margin, he should insert the *names* merely of the *cases*, or the *statute*, by which the principle is established. Then, within the *third* margin, in the fewest words, he should state the *exceptions* and *variations*, with the names of the cases or statutes by which each was established. Having thus done, he should again read the section, in the volume, to assure himself that he has rightly comprehended it.

When he resumes his work on the following day, he should slowly read his notes of the previous day, for the purpose of fixing them more firmly upon

the memory; and, when the work is completed, it would be wise to read *all* the notes once more in succession, so as to comprehend the whole subject, as it were, at one view.

So, in reading a *Book of Practice*. First, note the *Rule*, then the *Exceptions*, and then transcribe the *Form*. It will scarcely be necessary to note the *cases*, but *Rules of Court* and *Statutes* should always be named. The utility of *transcribing* the *form* lies in this, that it is seldom forgotten afterwards, and when it is named, in reading or discussion, a much more accurate conception of it is suggested than when it has been merely read; besides, the recollection of the form often recalls the rules that belong to it.

When, in reading either class of law books, you come to a *word* whose import you do not *thoroughly* understand, make it your invariable rule instantly to consult the Law Dictionary. And when you meet with *a case* which is stated to be important, or to be the *leading* one upon the subject, or which is in any way indicated by the author to be one of peculiar interest, score it in your note-book, and, as soon as you have completed the allotted portion of the text, turn to the Reports for the cases so scored and read them attentively.

This may appear a slow and tedious process of study, but it is a *sure* one. You will certainly learn more law in one morning thus spent, though you might not have mastered twenty pages, than in a week of mere reading, with the *appearance* of a volume perused. It should also be recollected that

the following recommendations are founded upon the assumption, that the impossible task is not to be expected of you that you should master *every* branch of law, and that the length of the course is apportioned with strict reference to this careful manner of pursuing it.

We must assume that you are entirely a novice, and ask you to accompany us from the very commencement of legal study. The first acquisition you will require will be a *general view* of the Law of England, its principles and its practice, its primary divisions, its history, and the manner in which it is administered. The *Commentaries of Blackstone* are, and will long continue to be, the universal teacher of this first step, not only on account of their masterly arrangement, but for the fascination of their style, which makes a theme, in all other hands so dry and difficult, here a pleasing and attractive study. Of the many editions adapting the great commentator to the present state of the law, the best beyond all measure is that by Mr. Serjeant Stephen, and with that we would recommend every Student to commence his legal studies.

Next to Blackstone, perhaps, *Smith's Elementary Sketch of an Action at Law*, a little book, but full of useful instruction, should be perused *twice*.

From Blackstone you will have learned the elements of every branch of the law, and, according to your destination, you will proceed to devote yourself more particularly to some or one of them. We are now considering the case of one who has



preferred the difficult ambition of an Advocate at the Common Law Bar.

He needs to know *something* of *every* branch of law; and, as the eldest and most scientific, he should begin with the *Law of Real Property*.

The history and foundations of this he will have learned from Blackstone; but he needs a more minute acquaintance than he can there obtain, although it will not be necessary for him to plunge into all the learning of it,—in itself almost the labour of a life. For the purposes of his practice, he will gather enough from *Williams on the Law of Real Property*, and the Second Edition of *Hughes's Practice of Sales of Real Property*, which perhaps contains the most complete abstract and condensation of the *entire* law of real property, *as it now is*, which our legal literature possesses. There are of course many books of greater fame and profounder learning, but they are all treatises on *particular branches* of the law, and not a systematic account of the *whole* law.

Of the distinct treatises on distinct divisions of Real Property Law, the Student can at his pleasure peruse one, or more, or none: if he reads but one, let him prefer *Fearne's Essay on Contingent Remainders*, as being an admirable exercise for his intellect, by its difficulty and profundity. It constitutes a sort of mental drilling, very useful for invigorating and expanding the reasoning and perceptive faculties.

If time will permit, the Student should make *Watkins's Treatise on Copyholds* a portion of his

reading, for he will scarcely acquire from Blackstone so much knowledge of that branch of Real Property Law as certainly is desirable, although not strictly necessary. And, subject to the same proviso, he may peruse the first volume of *Powell on Mortgages*, or *Hughes's Practice of Mortgages*, which more *condenses* the subject.

As intimately connected with this branch of his legal studies, he may here introduce the *Law of Landlord and Tenant*, a considerable acquaintance with which is indispensable. The best *existing* treatise on this subject is Mr. Archbold's.

The Student may now turn to the Courts of Equity, and the law administered by them; and, for this purpose, *Mr. Spence's Equitable Jurisdiction of the Court of Chancery* should undoubtedly be preferred. *Smith's Handbook of Chancery Practice* will teach the present practice of the Courts of Equity, with which the Advocate needs only so much acquaintance as consists in a knowledge of the outlines of the proceedings and their order, and the meaning of the various technical terms and phrases employed in those Courts, especially as great alterations are about to be made in it.

He will now be in a position to read with advantage, because, with an accurate comprehension of the principles upon which they are based, two subdivisions of the law which it behoves him to be familiar with, for questions growing out of them will continually occur in the course of his practice as an Advocate; we allude to the *Law of Trusts* and the *Law of Wills*.

On the former there is an authority of high repute which, although not precisely the kind of treatise required by the learner, is the best that can be procured. *Lewin's Law of Trusts* should be read with attention.

To that should succeed some treatise on Wills; and we have no hesitation in recommending *Mr. Allnutt's Practice of Wills and Administrations*, as containing, within a small compass, both the law and the practice, illustrated by all the forms and precedents, interspersed in the text, each in its proper place; and by means of which the reader is conducted, step by step, through all that is to be done, from the first instructions given for the drawing of a will to the final distribution of the estate. There are more ponderous works upon the subject, but they are rather adapted for reference than for reading. Where time is important, *brevity* is a great recommendation.

Another branch of Equity Law, which it behoves the Advocate to master, is the *Law of Partnership*. Mr. Collyer's book on this subject bears the highest reputation, and should be placed upon the Student's list.

Having acquired a considerable knowledge of the Law of Real Property, and of Equity Jurisprudence, the Student should devote himself to the mastery of the *Common Law*, with which he will need a more minute and intimate acquaintance.

The first obvious division is into *the Law*, and *the Practice*; and it will be necessary to know the former, in order to understand the latter. The

Student, therefore, should begin by applying himself to learn *the Law*.

Already Blackstone has taught him the general scope, and more important provisions, of the Law, as regulated by statute or by the decisions of the judges. In no other book will he find them so well stated. But now he must proceed to investigate the various branches of it.

As embracing the subject-matters of most frequent occurrence in practice, he should first read *Chitty on Contracts not under Seal*; or, *Mr. Addison's Law of Contracts*; both excellent books—but the latter, perhaps, the most carefully and artistically written; and, upon the whole, to be preferred to the higher reputation of the name of the author of the former work.

This should be followed by *Smith's Mercantile Law*, the new edition of which has added vastly to its value; and to that, *Byles on Bills of Exchange* will appropriately succeed.

It is singular that, as yet, there should not be a treatise on *Torts*, upon the same plan as *Chitty on Contracts*; but we understand that Mr. Paterson is preparing for the press a volume on this topic. Until that appears, the Student must reserve his reading of that branch of the law until a later period of the course.

These are the principal branches of the Common Law, and all which, for practical purposes, it is *essential* that the Advocate should make an *intimate* acquaintance with. The minor topics he may select according to his inclinations, his

industry, or his prospects, and read up special subjects for special purposes. Here we propose no more than is *necessary* for *all* Students purposing to become Advocates, whatever their probable destinies.

The *Administration* of the *Common Law* through the medium of the various tribunals will next engage the attention. The general outline of an action at law has been previously learned from the treatise of Mr. Smith; but that is a skeleton only, which it is now the laborious and difficult task of the Student to fill up.

He must begin with the most arduous and repulsive of legal studies, the *Practice of the Courts*. As their rules and decisions are continually shifting, it is necessary always to prefer the *latest* work on this subject to *the best*. For intrinsic worth, *Lush's Practice* is by far the most estimable; but there is no recent edition of it, and *Chitty's Practice*, by Archbold, although ill-digested, is the only safe authority *at present*. We would recommend it to be read thus:

Let the reader, as he proceeds, trace upon a large sheet of paper, after the fashion of a pedigree, the successive steps to be taken in the conduct of an action, from its commencement to all its various possible conclusions, inserting *the name* of each process, and the *number of days* within which it is to be taken or served, and any other peculiarity belonging to it, as, if it requires to be supported by affidavit, and such like. This map will serve the twofold purpose of

fixing upon the memory a multitude of minutiae which it would be almost impossible to recall from merely reading them, and it will relieve the tedium of perusing a book of practice, where there are no principles to exercise the intellect and guide the search, but where all is arbitrary rule, which can only be retained and recalled by sheer power of memory.

It will now be necessary for the Student to be initiated into the mysteries of *Pleading*, to which the master-key is given in *Stephen's Principles of Pleading*,—a work of inestimable value to the learner, as reducing to a system and a science that which in every other book appears as a mass of arbitrary rules, without mutual connection, and with no other reason to support them than the *sic volo* of the Courts. Although undoubtedly capable of much simplification, and still modelled more than it should be after the traditions of the past than according to the requirements of the present, the science of pleading, as set forth in this treatise, will be acknowledged to have been a highly intellectual production, and to have deserved all the admiration expressed for it by the Lawyers who beheld it in its completeness, and whose acuteness had been exercised in the daily application of its wonderful refinements. If it had its evils for the suitor, it was certainly advantageous to the Profession, and we have no doubt that it was mainly instrumental in producing the *great* Lawyers of former days, whose like we now look for in vain. Still, though shorn of its ancient

honours, enough remains to exercise the intellect of the Student, to engross his powers of attention and of reflection, and to interest him after a while in the curious learning it unfolds to him. If it have no other use than to teach him to observe *minute distinctions* in *language* and *idea*, the study of special pleading will be of invaluable service to the Advocate, whose business it will be to interpret decisions and statutes, and apply them to particular facts, and who needs, therefore, ready and accurate perception of the most trifling differences, upon which the question so often turns, whether his case be within or without the law proposed to be applied to it. Immediately after this masterly work, which should be read twice, at least, and carefully analysed in the manner already described, the Student should read *Mr. Finlayson's Leading Cases in Pleading*, where he will find the practical application of the learning he has acquired.

Next in natural sequence to the *Practice of the Courts* and *Pleading* comes the *Law of Evidence*, to the Advocate the most indispensable of all branches of legal knowledge, and which he needs to possess, not merely *stored* in the memory, but so *arranged* there that it can be produced in a moment, when occasion requires. For, be it observed, the application of the Law of Evidence almost always occurs in the course of a trial, when there is no time for reference and very little for reflection; when an objection, if not taken on the instant, before the words are out of the witness's

mouth, comes too late, and which, if taken, must be supported with reasons which there will be no leisure to make search after in books; they must be at the tongue's tip, ready for instant use. Undoubtedly this promptitude of application can only be acquired by practice; the most accomplished lawyer is perplexed at first; but the knowledge itself must be obtained in the study, by reading,—the manner of its employment is the education of the *Court*.

On this branch of the Law there have been two standard works; namely, the treatise of Mr. Starkie, and that of Mr. Phillips; the former the most elaborate and practical; the latter, perhaps, the most scientific; and if the Student can find time for the perusal of both, he should begin with the latter. But there is a third book, lately published, and, therefore, adapted to the existing state of the law, which has been materially modified by some recent legislation, *Mr. Taylor's Treatise on the Law of Evidence*, which is entitled to attention, and, probably, would be preferable, for the purposes of *study*, to either of its predecessors. It is, in substance, a famous American treatise, by Professor Greenleaf, adapted to English Law, which differs but slightly from that of the States. It is beautifully written; the principles are defined with remarkable perspicuity, and the illustrative cases are selected from a wider range, embracing those of the American as well as of the English Courts, with repeated references to the law of other countries—a feature of American



legal literature which might be worthily followed by our own jurists.

The *Law of Evidence* being of such primary importance to the Advocate, it should be read with particular attention to the system of noting previously recommended. And when the book preferred has been completed, it should not be laid aside altogether, but thenceforward, mingled with the studies of each day, should be the *re-perusal* of some portions of the Law of Evidence, or of the leading cases by which its most important principles, or their exceptions, have been established.

*Selwyn's Law of Nisi Prius*, in its latest edition, will next teach the uses, both of pleading and evidence. Here the Student will see the practical application of almost every branch of law which he has been reading, from the beginning of his labours. But it is not a book to be read through continuously, day by day, like a treatise on some single subject, but small portions of it should be read daily, mingled with other subjects. Although a part of the course of reading, and stationed here as its most appropriate place, it is intended only that the Student should *begin* its perusal at this point, and henceforward pursue it contemporaneously with the books that follow. A work not so well known, but more copious, and in many respects better, than Selwyn, is *Harrison and Edwards's Nisi Prius*, the greater portion of which was the production of Mr. Edwards's unassisted labours, his colleague having, soon after its com-

mencement, obtained a colonial appointment. It is remarkable for the clearness and precision with which the law is defined, and the acuteness with which the points actually decided in a case are eviscerated. It is to be regretted that there has been no recent edition of so able a work.

The *Criminal Law* should next engage his attention, and this will be best learned from the last edition of *Russell on Crimes and Misdemeanors*; a very costly and somewhat ponderous book, but, unquestionably, the most copious and correct treatise on the Criminal Law the library possesses.

The knowledge of *Quarter Sessions Law* needs to be very intimate, for in that he will probably make his first essays as an Advocate. To acquire this, he should read *Dickinson's Practice of the Quarter Sessions*, an excellent book for the Student, however worthless to the Practitioner. This will give him an insight into the general jurisdiction and practice of the Quarter Sessions. But he will require something more than this with a branch of the law he may be called upon to practise before the gloss is gone from his gown; he must make himself intimately acquainted with the particular branches of it in most frequent operation. For that purpose, he should study *Archbold's Poor Law*, and *Mr. Saunders's Law of Bastardy*. All the recent law administered by Magistrates, and over which the Quarter Sessions have jurisdiction, as prescribed by statute and settled by the decisions of the Courts, has been gathered and arranged in the *New Magistrates' and Parish Officers' Law* of

the latter gentleman, where it is to be had in a collected form. As, during the last six years, most of the principal branches of Magistrates and Parochial Law have been subjected to considerable alterations, the Student will obtain from this work almost all the most useful information he will need relating to these branches of the law *as they are* at present.

We have now taken the Student through a course which embraces all the prominent points in the circle of legal knowledge, and that their connection may be better understood, it will be convenient to group them in one field of view. Beginning with Blackstone, he learns the outline of the law, its boundaries, its divisions, its prominent parts, and their mutual connection, the origin and history of that which, unexplained, appears meaningless and absurd. He next masters the Law of Real Property and the Principles and Practice of the Courts of Equity, as being necessary to the proper comprehension of the principal branches of it, to which he then turns: the *Law of Sales*, the *Law of Copyholds*, the *Law of Trusts*, the *Law of Wills*, the *Law of Mortgages*, and the *Law of Landlord and Tenant*.

The study of the Common Law is now to be begun, and he learns, in succession, the *Law of Contracts*, the *Mercantile Law*, the *Law of Torts*.

The manner in which this Law is administered, through the medium of the Courts of Justice, is the next natural division of his studies--the *Practice of the Courts*, the *Science of Pleading*, the *Law of Evidence*, the *Law and Practice of Nisi Prius*.

The *Criminal Law*, and the Law administered by Justices of the Peace, including the *Practice of the Quarter Sessions*, the *Poor Law*, the *Law of Bastardy* and *Parochial Law*, come next in order.

And, lastly, the *Law of Debtor and Creditor*, including that of *Bankruptcy* and *Insolvency*.

This course may be expanded to any extent that may suit the leisure, the capacities, or the industry of the Student. Many minor branches of the law, not included within it, may be advantageously added; but it would be difficult to name one that might be safely excluded. We have sought to sketch *the shortest*, rather than the most complete, outline of the studies necessary for the Advocate, and we have advised rather what is *practicable* than what is *desirable*. But there are a few books yet remaining, which we place together at the end of the course, because they do not properly belong to any particular division of it, and might be read with advantage simultaneously with all or any part of it.

One of the most necessary, and at the same time one of the most difficult, accomplishments of the Advocate is the reading of an Act of Parliament. Strange as it may appear to a person who has not yet entered upon the study of the law, the art of construing a statute is not merely an exercise of the ingenuity—it involves no small amount of actual learning, which has formed the theme of bulky volumes. *Dwarris on Statutes* will serve to introduce him to the mysteries of this art, which he should omit no opportunity of practising in the

course of his reading, by seeking to construe, according to the rules he has learned, all such moot points of construction as he may meet with in the books.

Nor should he be content with this alone. It is excellent practice to *translate a statute*, thus: read it section by section, with care and attention; then, in the fewest words, and avoiding technicalities, in the plainest and purest English, state in writing the substance of the section; that is to say, the provisions intended by it, divested of the verbiage and peculiar phraseology of an Act of Parliament. State it upon paper as you would describe it to a person not a lawyer. This will accustom you readily to extract the meaning of a statute, and to understand the value of seemingly minute differences of expression.

Another exercise of a similar kind is that to which we may be permitted, perhaps, to apply a term borrowed from our schoolboy memories—the *Parsing of a Deed or a Plea*. By this we literally mean the exercise so called;—that is to say, let the Student take a deed, for instance, and beginning with “This indenture,” parse *every word* to “day and year first above written,” stating its meaning, the reason of its employment, its value in that place, and its operative effect. By this process he will thoroughly probe his own knowledge,—he will ascertain not only how much he has learned, but how readily he can use his learning; and the same exercise might be, with equal benefit, extended to Pleadings, both Civil and Criminal, and, indeed, to precedents of every kind.

There is a work which no Student should omit to read, for it is, perhaps, next to Blackstone, the most instructive in the Law Library: *Smith's Leading Cases* should be begun very early in the course and read with it; nor should one perusal suffice. Some of the most important branches of the Law are so accurately traced from the leading cases by which they were determined through all the exceptions and variations introduced by successive decisions on their application to different circumstances, and the points determined are so clearly and precisely defined, that, whether as teaching a mass of the most valuable and practical law, or as a wholesome exercise for the intellect, these two volumes should be perused *twice* at least.

The works of Mr. Justice Story, although they come to us across the Atlantic, will have a place in the studies of the British Advocate. These masterly productions are models of legal writing. He rises above the mere practising lawyer, the man of cases and forms, and becomes the philosopher, teaching principles which are universal and eternal. Law in his hands becomes what it should ever be deemed by those who expound it, whether from the judgment-seat or the study—a *great science*, whose foundations are as broadly and unchangeably laid as those of any other of the moral sciences, and not so dependant upon accidental and arbitrary decision as it is the habit of English lawyers to deem it. *We* have carried to an absurdity the reverence for precedent, which ought to be used only by way of exposition or illustration of *principle*,

and not as *in itself* the reason for a decision of the particular case under discussion. For, in truth, when we talk of *cases in point*, we only mean cases that *approximate*, not such as are *identical*, because rarely does it occur that the facts are precisely parallel; indeed, if they were so, there would be nothing to discuss. The rational use of *case law* is to show *the principle* that guided the decision, and how it *was* applied in a particular combination of facts, and thence to show that the case now under consideration does or does not come within the scope of the same *principle*; and the proper foundation for the argument, and the true reason for the decision, should not be *the cases*, which were employed only as *illustrations*, but the *principles* that are to be traced in them.

It is in this manner that Mr. Justice Story has composed legal treatises which are consulted and cited as authorities by the Lawyers of other nations besides that one whose particular laws they profess to expound. And wherefore? Because the foundations of Law are everywhere the same. In all countries the Law divides itself into two great branches. There is *the Law*, properly so called; the code that regulates the conduct of men towards their fellow-men individually and their duties to the state; and there is the *administration of the Law*, which is, the *forms* by which it is enforced. The Law itself is very nearly the same in all civilized countries, for the rules of right and wrong are immutable and eternal; human nature is everywhere alike, and the same chain links society,

which must be protected by the same services and prohibitions. But the manner of its administration—the forms by which it is enforced—the nature and amount of its sanctions, admit of infinite differences, according to the habits, the ideas, and local circumstances of every people. Hence it is that treatises upon *Law*, properly written, have an interest and a value beyond their locality, and hence also it is that Mr. Justice Story is not only revered as an authority throughout the civilized world, but in his own works has largely cited the authority of foreign jurists. His *Conflict of Laws* is a treatise on International Law, a subject which English lawyers have, for the most part, strangely neglected; his *Law of Agency* will demand a patient perusal. But it will be scarcely necessary to bespeak that for them. The Student will find them full of interest and attraction.

This list might be extended to any length that circumstances and inclination permit, but it will not bear much curtailment. An Advocate could not safely adventure upon the Practice of his Profession with a less extended circle of preliminary study. No *subject* comprised in this list could be altogether excluded, without leaving the Student in fatal ignorance of some department of the Law, which he may be required at any moment to apply to some case suddenly submitted to his judgment, when there is no time for “looking into it,” as it is professionally termed, or, in other words, *reading up* for it. The only means of abbreviating the course, whose outline we have sought to trace,



would be, by preferring some books that treat their subjects in a more brief and elementary manner. This probably might be done in a few instances, but for the most part we have already selected the books in which condensation has been carried to its utmost limits consistently with accuracy.

But let not the Student be alarmed because, while pursuing his labours at the chambers of the pleader and the conveyancer, he finds his time for hard reading so curtailed that no industry consistent with health will enable him to accomplish it during the three years of his novitiate. It is not probable that he will be able to do so. In the first place, no amount of industry, no number of hours daily dedicated to his legal studies, *can* possibly qualify him in that time for *Practice* as an Advocate. If he be prudent, he will not avail himself of the privilege of being "called" so soon as his dinners are eaten. He will devote five years, at least, of the same unwearied and unbroken toil to his studies, before he places himself in a position where failure at the first may be fatal to his after prospects. Or, even if he be so unwise as to assume the gown and wig immediately on the expiration of the period of probation, he should only strive the more to escape the not improbable consequences of his folly, by continuing with even more zeal the course of reading recommended, trusting to his good fortune for *an escape from clients*. There is nothing he should more *dread* than the appearance of *a brief*!

So far we have sought to suggest to the Student

*what* he should *read*. But he will not accomplish himself to be an Advocate by reading alone. Books, it is true, form the foundation of his knowledge; without much and attentive study of them he cannot possibly become a Lawyer; but it would be most unsafe to rely upon Books only, without other assurance than his memory that he has really mastered the learning he has been perusing.

There are two methods by which the Student may attain this necessary object, viz.—by *writing* and *speaking*. It is in one or both of these forms that he will be required in his after-life to employ the knowledge he has obtained from Books; and it is not until he begins to make a practical use of his acquirements that he plumbs the depth, and measures the extent, of his knowledge; that he learns how much of it is substantial, and, above all, how it is to be applied in practice.

He must use the pen often and fearlessly; for it is by the pen that he will discover the defects in the lessons which the eye has conveyed. First, fearless of the name of *drudgery*, which idleness has affixed to it, let him copy *with his own hand* all the *forms* used in all proceedings at Law or in Equity. This, at the first glance, may appear a needless expenditure of time and toil; but a little reflection will discover its worth. It is with these processes that he will have to deal continually in the course of his practice. He will have a very vague conception of them from any mere description that could be conveyed in words. A moment's inspection of the form itself, and a careful copy of

its phraseology, will more perfectly impress it upon his memory than reading about it for an hour. In the latter case, when any process is named, whether in a book or in argument, imperfect and cloudy would be the conception of it that would arise in his mind, and uncertain his understanding of the points thereupon raised. In the former case, the technical name instantly brings before his mental vision the very object itself, clear and intelligible, and he is enabled to treat of it as accurately as if it was then lying bodily before him.

There is another reason why the Student for the Profession of an Advocate should do this. It is the only means by which *he* can attain to a knowledge of the *Practice of the Law*. Every Writing Clerk in an Attorney's office will be able to detect his errors, and laugh at him, if he does not master such elementary information as this. But he cannot learn it, as does the Articled Clerk, in the *ordinary* course of his Studentship. He must, therefore, make it his special care to overcome this defect, by resorting to other means for acquiring the information so necessary for him. He may do so thus:—

Among his acquaintance will probably be an Attorney in practice; if not, with such an errand he may venture to intrude himself upon any respectable practitioner in his neighbourhood, to ask that which will be readily accorded to him,—the loan of such papers as he requires to prosecute his studies. Then let him, *with his own hand*, copy fairly into a book each one of the processes we

have named. Thus will their aspect, their technicalities, their phraseology, be indelibly impressed upon his mind; he will form a more distinct and accurate conception of them than by merely reading about them, and when he has occasion to treat of them, he will speak of their characteristics with a precision to which he never could have attained by any verbal description, or by reading about them in a text-book. This plan should be adopted from the first step in an action to the final one, inserting every process that might possibly be employed in the course of the most complicated cause. Nor should he be content with thus copying the proceedings in an action at Law; he should do the same with a suit in Equity, with Indictments, with proceedings in Bankruptcy and Insolvency. Nor should Conveyancing be neglected. He should make one copy, at least, of all the principal forms of Conveyances.

This work of copying should be commenced at the beginning of his studies, and be continued without remission for a fixed time—say one hour, every day. He will find it of incalculable value in his education, by familiarising him with the technicalities of the law and illustrating his readings. It will form also a fit preparation for his next occupation, which will be that of *drawing precedents* similar to those he has been copying.

As soon as he has sufficiently advanced in the double task of reading and copying, he must test his acquirements by drawing such processes as are not, as it were, stereotyped by statute or by

practice. This should be the manner of doing it:—

Let him read with attention the description of the particular process, and the law relating to it, as he will find it in his text-book. Then, closing the volume, let him, from recollection of the learning applicable to it, draw the form required. When it is completed, he should compare it with the precedent in the printed volume, and scoring the passages that differ, let him investigate them one by one, in order to see whether it is in substance, or in phraseology only, that the difference lies. Let him recal the reasons that led to the adoption of the language in question, and compare them with the reasons for the form given in the text-book, and the result will correct erroneous judgment or supply deficient information, discovering to the Student the points in which he is weakest, so that he may strengthen them, and what are his deficiencies, so that he may supply them.

If the Student have not ingenuity to imagine cases upon which to frame these fictitious pleadings or conveyances, he needs but to open any volume of Reports, and he will find combinations of circumstances that will afford ample scope for the exercise of his abilities.

SPEAKING is another valuable aid to the education of the Advocate. We do not now refer to the general advantages of accomplishment in the Art of Oratory, for that will be a theme for consideration hereafter,\* but to the particular benefits that result from it as an assistant in the work of education.

In speaking, even more than in writing, we discover the true extent and accuracy of our legal acquirements. Writing may be assisted by researches at the moment; but speaking allows no time for investigation. If the speaker be not ready with his reasons when they are wanted, he not only becomes painfully conscious of his own deficiencies, but he feels that his audience recognise his incapacity.

Hence, we would urgently recommend every Student who lives in London, and has begun to keep his Terms, to make a point of joining one of the legal debating societies, where he may at the same time test his knowledge and his capacities, and prepare himself for the pursuit of his profession. There he will find an audience, cold and critical, indeed, but patient; and to whom he may utter his crudities of thought and broken sentences, with the consciousness that they are, for the most part, learners like himself, and subject to the same infirmities. At all of the existing Law Debating Societies it is wisely provided that every third discussion shall be upon a general question, usually political. The purpose of this is to prevent the members from falling into professional mannerisms; to enlarge the circle of thought in them; and to encourage reading and reflection beyond the range of law studies. Were it otherwise, these societies would become only schools for pedantry, and would certainly produce very bad Advocates, if very learned Lawyers.

Their uses to the Student are incalculable. He there learns the first step in the art of speaking,—

to open his mouth as readily when he stands as when he sits, and to hear his own voice without being afraid. He acquires in this school the art of governing his temper and his tongue; the former, by the merciless replies which it is the wholesome practice to encourage, and which form so excellent a preparation for the more real conflicts of the Bar; the latter, by the prompt and unequivocal expression of displeasure sure to be exhibited upon any departure from the language of polite society, or any licence given to unbecoming personalities. Surrounded only by those who are either beginners like himself, or who have but lately emerged from the condition of the neophyte, he may adventure the only *sure* path to success—*failure*. What if he stumble, halt, break down altogether? No matter. He needs not to be ashamed. It has been the fate of many of his audience, of some of those who now talk the most fluently and exhibit the most ability. What others have done, he *may* do, and, if he is bravely persevering, he *will* do. Failure in the *public* presence might be fatal to his prospects; how desirable is it, then, that it should be first encountered in *private*. And it must not be permitted to deter or dishearten. In this, as in most other affairs of life, we learn more from our failures than from our successes. No matter though it follow once—twice—thrice. Let his motto be, “*Try again!*” Let him remember that Greatness consists, not in never falling, but in knowing how to rise again.

We say, then, to the Student, omit no opportu-

nity to *attempt to talk*, and on *every* subject, legal and general. It is the express purpose for which you have joined the Society. To the legal debates come prepared by previous research into the cases and authorities, which set down upon a card, with two or three lines of notes, sufficient to recal the point decided should it escape your memory. Sketch also upon the card a very brief outline of your argument—the *heads* of it merely; that is to say, the divisions into which you propose to marshal it. This will give you an early habit of methodizing your speech; it will accustom you to keep to the point, and always to have a plan, more or less perfect, which will serve to direct your thoughts, and to bring you to a conclusion when you have said all that you have to say. The preliminary research will accustom you to “look up” a point with rapidity, and teach you how to *find your law*—an art as difficult, and almost as useful, as that of remembering it. The discussion will teach you how to argue, show you the nice distinctions of ideas and language, which are the occasion of nineteen-twentieths of the points that occupy the attention of the Courts. It will give you a habit of *accuracy* in reading, as well as of close attention to every expression, which it is difficult to acquire by any other means. If you have not found leisure to prepare yourself by previous research, do not therefore be deterred from taking part in the discussion. On the contrary, be only the more resolute to speak, remembering that it will be often your duty as an Advocate to undertake a case



without any preparation, and with only your own natural acuteness and rapidity of resolve and action to direct you in its conduct. Here you will have some of the experience of such a position, without the responsibility. On such occasions, you will of course reserve yourself for answering the remarks of other speakers. From them you will be sure to learn the principal questions at issue, to hear the cases that bear upon them, and then, exercising your own thoughts upon those materials, you will be sure to discover a great deal that may be said on one side or the other, which has either escaped the previous speakers, or which they have left in doubt. Thence you will learn the art of reply, and, above all, confidence in your own resources, so that, however suddenly called upon, you will be able to say something pertinent to the occasion.

So much for the uses of Debating Societies, and the manner in which the Student may employ them to the most advantage. We quit them here, because it is our purpose to devote a distinct chapter to the Training of the Advocate in the Art of Oratory, under which many topics suggested by the present theme will more properly and conveniently come to be considered.

## XVIII.

### PHYSICAL TRAINING.

WE have traced the *Moral*, the *Intellectual*, and the *Professional Training*, of the Advocate. But these will not suffice; their advantages may be neutralised, unless accompanied by an equal attention to *Physical Training*.

Perhaps some may be inclined to deride the formal introduction of such a topic, and to ask if we propose to educate the Advocate like a prize-fighter. But a little reflection will serve to show that his duties demand the exercise of certain PHYSICAL capacities, which are as capable of cultivation as the faculties of the mind.

Health is an advantage to all men, but it is *essential* to the Advocate. In other pursuits, the absence of it may not disqualify for the discharge of the duties belonging to them. An Attorney may control his office, advise his clients, study his books, and conduct his business, although feeble in frame

or suffering from disease. A Trader may manage his affairs, even if his voice be weak, his hand trembling, his nerves shattered. But the Advocate cannot perform his functions with frail lungs, an aching head, or a failing frame. He may not choose the hour for his exertions. He must be ready at all times to answer the call of his clients, to endure close and crowded courts, irregular meals, contracted sleep, consultations early and late, work without pause, and unceasing excitement. To enable him so to do, he must not only inherit a good constitution from nature, but he must train it to endure the trials to which it will be exposed by the exigencies of his Profession. Terrible indeed would be his disappointment if, neglecting this duty, he should master, by the labours previously described, all that *the mind* needs to qualify him for the highest place in his high calling, and then find his accomplishments and his learning worthless, because he has not the *physical capacities* requisite to carry him through the fatigues of the day, or to enable him to give expression to the wisdom that is in him.

Already we have ventured an earnest and solemn exhortation to those who are not possessed of great constitutional vigour and robust health, whatever their fitness in other respects, to seek some other calling than that of an Advocate, to whom health and strength are indispensable. But even natural robustness will need to be confirmed and cultivated, or the toils of the study and the Court will impair its powers. Not inappropriate then is the conside-

ration which we propose to give to the *Physical Training* of the Advocate.

It should be of two kinds, *general* and *special*; the former directed to the preservation of the general health, the latter to the cultivation of those physical functions which are more especially exerted in the business of an Advocate. The one we shall but briefly touch upon, the other we shall endeavour to treat more minutely, because it peculiarly belongs to the subject of this essay.

General attention to the Rules of Health is demanded of every person; but for none is it more requisite than for those whose occupations are sedentary, and upon whom the claims of the study are continually operating to sanction, as it were, that *vis inertiae* which more or less affects all of us. Hence, with those who are not compelled, by their calling, to bodily exertion, it is necessary to substitute for the stimulus of circumstances an impetus from within, supplied by a resolute will, operating in pursuance of a preconcerted system. It will not suffice to make a general resolve—"I *will* walk," "I *will* bathe," "I *will* rise early," "I *will not* be late at night." Intentions thus vague are sure to yield to the temptations of the moment. Excuses will be ever present to second inclination. "Some other time" will be the ready answer, until, by degrees, the resolution itself is forgotten. The Student must *begin* by regulating his Physical Training as methodically as his Professional Studies. Not only must he determine how much time in each day he will dedicate to it, but he must appoint

*the very time.* The *same hour* should find him engaged in the same pursuit, whether of labour, or of exercise, or of rest.

Not less than *two* hours in each day should be devoted to bodily exercise—to walking or riding. It would be prudent to divide his walks into *two* periods, giving to them *one hour* in the morning, and *another* in the evening. The one strengthens him for the work of the day, the other refreshes him after its labours. Mind and body share the wholesome influence of the free wind, the unfathomable sky, the cheerful country. Nor is this all. It is the time for *thought*. While reading, we do not *reflect* much; we do but gather food for reflection. When books are out of sight, the ever-busy mind employs herself in digesting what the printed page has taught; and nowhere is this wholesome and necessary process more actively pursued than during the ramble or the ride.

But, to carry out this rule, the Student must adopt another, equally necessary to his health, and, consequently, to his success. He must resolve to retire early to rest, that he may rise betimes. Without assenting to all the wise saws that proclaim the benefits of early rising, or adducing in answer to “the early bird finds the worm,”—that the poor worm who *is eaten* must have been earlier,—we cannot but concede that to the Student the practice is fraught with great advantages. The midnight lamp is, perhaps, most congenial with the exercise of *the fancy*. Works of imagination, which require the *inventive* faculties to be wrought to a

high pitch of excitement, can be better composed after the day's occupations have dulled the other faculties, and no other thoughts or sounds obtrude to divert the attention. But it is not so with the mental occupations of the Law Student. They demand the exercise of faculties which are always most energetic after sleep, and grow weaker as the day advances, — memory, comparison, perception, reason. One hour of morning reading of a law book will be more profitable than three hours of it carried far into the night. Thus, for the purposes of study, independently of health, it is very necessary that the Law Student should begin by a stern resolve *to rise early*. If he will do *that*, he will be sure to retire early to rest.

It would be well if he were to appoint *six* o'clock as his hour for rising, but on no account should he be later than *seven*. That he may not be deterred in the winter by a fireless and unswept room, he should have his study put in order and the fire laid, after he leaves it at night; or, if that be impracticable, his bedroom might be prepared for the fire to be lighted as soon as he quits his pillow. In the summer time, he should commence the day with his morning walk. In the winter, he should await the rising of the sun, whom he has preceded. Returning, he will pursue his studies until his breakfast-hour, renewing them after that meal until the dinner bell. The evening walk should always be taken as nearly as possible at sunset, not only as being the most beautiful time, the most calming and subduing, the most wholesome in its influences upon

mind and body, but as being usually the most favourable as respects the weather; it being a fact, not noticed in the books, but confirmed by the experience of the writer, that, however wet the day, there is usually a cessation of rain at sunset, inso-much that in nearly twenty years of walks rarely omitted at the hour of sunset, he believes he has not twenty times encountered rain. The evening will see him again at his labours; and at *eleven* precisely, whatever the interest of the subject, how great soever the temptation to "a few minutes longer," let him resolutely close his book, lay down his pen, and retire to rest.

There is a practice, highly conducive to health, which we cannot omit to notice here, because, with so much that is noxious to encounter, the Advocate cannot use too many precautions to prepare himself for resistance. In summer he should *bathe* regularly, if he have the opportunity; but winter and summer it should be his daily habit to sponge the whole surface of the body with cold water, immediately on rising.

If he can obtain access to a *gymnasium*, it would be well to practise there the more active exercises of the limbs twice or thrice in the week.

Nor are field-sports to be contemned by the Student, provided he have sufficient self-command to indulge them with *moderation*; and if he have it not, he had better not aspire to be an Advocate, for it is a quality he will require every day. Besides his two hours of daily exercise, he may *profitably* give to himself a day's holiday once in

a fortnight, and a *vacation* of entire rest from toil during *three* weeks of the year. Nothing is gained in the end by over-work. To attain a temporary object, labour may be extended under the influence of undue stimulus for a short period; but the advantage is invariably purchased by subsequent depression, precisely proportioned to the excess—for nature will, by no contrivance, be cheated of her claims; she will not permit one part of our complex being permanently to profit at the expense of the other. All reasonable *recreation* is permissible to the Law Student; he may safely and wisely dedicate one afternoon in the week to cricket, or rowing, in the summer; one morning in the week to hunting, or shooting, in the winter; provided he does not pass that limit, and provided also that he does not fall into the common failing of what is termed “making a day of it,”—or what is, in fact, nothing more than the folly of *wasting* three or four hours before, and five or six hours after, a recreation. Let it be borne continually in remembrance that the day has sixteen hours; that there is ample time for what would be deemed a good day’s sport in the stubble, or at the hunt, or on the green, in one half of the hours that make up the day, leaving to the Student some five or six hours, even of what would be called a holiday, for profitable pursuit of his studies. It is in consequence of the neglect of the practice of turning *every moment* to advantage, of mingling study with recreation, of *occupying every minute*, working till



the time when the recreation begins, and returning to work the instant it is over, that people fall into the two extremes of error—either passing their lives in worthless idleness, or destroying health and life by over-work. It is very practicable to combine a sufficiency of labour for all useful purposes with ample recreation for all healthful purposes. Pleasure may be abundantly reconciled with profit by the simple process of *making the best of time*; by which we mean, the dedication of *every moment* to a *purpose*, either of study or of recreation, and permitting no moment to mere do-nothing idleness, which is neither one nor the other, but which nevertheless absorbs a large proportion of the entire lives of multitudes, who are ever complaining that they have no time for study, or no time for pleasure.

This is the solution of the seeming paradox that the busiest man has always the most leisure; this is the secret of much-doing; this is the *elixir vitæ*, which really doubles our lives by doubling our profits and our pleasures; let not a minute pass unemployed; turn instantly from recreation to work, from work to recreation; *work* when you *are* at work; *play* when you play; *rest* when you rest; *sum cuique*.

Let exercise be combined with temperance. The *mind* is much more affected by the *quality of food* than men are willing to admit. The Student speedily discovers the difference in his mental powers as he feeds lightly or heavily; animal food once a day suffices for him who has

little bodily labour, and who desires to keep his mental faculties active and keen. His breakfast should be of milk, or coffee, or tea, with bread alone, and he should shun suppers as destructive to his morning studies. Especially should he avoid wine, because it will make him feverish, and beer, because it will make him sleepy. The nearer he can approach to "total abstinence" the better for his reading. Whatever may be the difference of opinion as to the propriety of total abstinence in all cases by all persons, there can be no question as to the necessity of *extreme temperance* to the Student.

Another caution we may be permitted to offer. Use no stimulants to keep you *up* to your studies. When the attention flags, the head nods, the eyes wink, do not swallow tea, or coffee, or spirit, in order to keep you awake, but look upon the irresistible tendency to slumber as a signal from Nature that she is exhausted and needs rest; yield to the solicitation; let her sleep, and you will awake with renewed liveliness and vigour. The temporary benefits of an artificial stimulus are always purchased at the cost of subsequent depression, demanding a renewal of the dose, until the whole nervous system becomes disordered, and you are unable to pursue your labours without danger to life or reason, and in the end you find your loss greater than the gain.

Regularity of meals is another essential to health for those who lead a sedentary life.

These suggestions may appear to some as out of

place in a treatise on the training of an Advocate; but his studies are necessarily severe, and demand for their accomplishment the entire devotion of the *sound mind* in the *sound body* during a long period of time, which leaves no margin for subtraction on account of ill health.

And not only has he need to secure this healthy condition during the period of his study, but he must prepare his frame to endure the yet greater trials to which it will be subjected when he enters upon the active duties of his Profession. Although these hints have no pretension to novelty, they may serve to induce the Student, who may have deemed lightly of them when addressed to the general reader, to pause, reflect, and adopt them, when specially presented to his attention in a work which aims to show him how he may best prepare himself for the Profession he has resolved to embrace.

Besides, it is part of a plan which would have been incomplete without some such short notice of duties that properly belong to it, and without attention to which all other qualifications of nature or art will prove worthless to the Advocate.

## XIX.

### THE ART OF SPEAKING.

WE have reserved this branch of the Education of an Advocate for careful and elaborate consideration in a distinct chapter, not only on account of its great importance, but because it can but be *begun* during the term of his Studentship, it must be *matured* by practice, and the longest life will not serve to witness its *perfection*.

Two classes of accomplishment are essential to successful oratory, *matter* and *manner*.

It would seem like a truism to say that a man must have ideas before he can speak, were it not that every day produces instances to the contrary. Nothing is more common than copiousness of words combined with lack of thoughts, and abundance of ideas which are unable to shape themselves into language. The faculty of readily communicating our ideas to others is as distinct, and as various in its degrees of natural power

in various persons, as any other of the mental faculties.

And, like the rest, it is capable of being improved, more or less, according to its original capacity. When it is naturally feeble, no care will do more than make it less painfully conspicuous. Industry will cultivate it to the utmost limit of its capacity, but not beyond ; and, therefore, as we had occasion to observe at the commencement of this treatise, it would be most unwise for one who is conscious of natural slowness of thought, or natural feebleness of expression, to adventure upon the Profession of an Advocate, to whom rapidity and vividness of ideas, and ease and elegance of language, are essential qualifications.

Assuming, then, that you are, at least, not *deficient* in either of these faculties, you must prepare yourself for becoming an orator by filling your mind with a vast variety of information, upon every subject within the ordinary range of professional, public, and social life ; such as may be obtained from the course of study described in the preceding portions of this treatise. “Reading,” says Bacon, “makes the full man,” and that is the foundation of all substantial oratory. An audience will soon weary of mere imaginations and abstractions. Flashes of poetry are pleasing and effective, when used with taste, as ornaments ; but they pall by frequent repetition. There is no topic and no audience that does not demand a substratum of good sense and substantial information in the speaker. But especially is it so with the Advocate,

who deals with the most serious concerns of life, who has to discourse on matters of business, to whom the opportunity rarely offers for indulging in declamation, and who must usually substitute the interest of extensive knowledge applied to the actual affairs of life for the attractions of the loftiest flights of oratory, only demanded upon occasions of rare occurrence.

Then, while daily pouring fresh stores of knowledge into his mind and exercising his powers of reflection, accustoming himself to *think* as well as to *observe*, let the Student pursue the *special* training that will enable him to make use of the facts he has learned and the thoughts he has conceived.

Following the natural order of the process by which a speech is produced,—the facts, the thoughts, the language, the manner of delivery,—and referring to the hints already given for the acquirement of the facts and the thoughts, we proceed now to consider how best the Student may accomplish himself in *language* and *delivery*.

And, *first*, for the acquirement of ready, pleasing, expressive, and intelligible *language*:—

It has been already observed that there is manifestly a mental faculty that prompts to speech, for its development varies immensely in individuals educated amid the same influences. This faculty shows itself, not only in readiness, but in copiousness, and even in elegance, of language, for which neither reading nor society will account; while, with others who have enjoyed every advantage of

books and teaching and intercourse with polite writers, there is often found hesitation and inelegance. Although, where this defect exists, it can never be entirely removed, it is undoubtedly capable of great mitigation, while the faculty itself, when *naturally* active and capacious, admits of almost unlimited improvement.

There are *three* methods by which the command and the choice of *language* are to be cultivated,—*reading, writing, and speaking.*

The *reading* to which we here refer is that which is to be pursued exclusively, or principally for the purpose of the acquisition of *words* and *style.*

It should be the steadfast aim of the Student in the first place to saturate his mind with *the purest English.* The classical studies of the school and the university will have exercised an unavoidable influence over his expressions, which it will cost him much perseverance and resolution to *unlearn.* After years spent in daily and almost exclusive communion with Greek and Latin books, the words derived from those tongues will much more readily rise to the lips than the, to him, less familiar words that have been transmitted from our Saxon ancestors. Nevertheless, the former must be discarded, and the latter substituted, if he would attain to any success as an Advocate. The words, to him and those who have been educated like him, so intelligible and expressive, are as incomprehensible as are the languages from which they were derived to the class of persons whom he will need to

address as jurymen or as witnesses. Let him be ever so eloquent, fluent, pleasing in tone or graceful in manner—let him boast the possession of every other qualification of the orator, and he will assuredly fail of success as an Advocate if he should address his audience in a phraseology that abounds in expressions borrowed from the classical tongues. There needs no elaborate proof of this ; the fact is manifest to all who attend our Courts. Nothing is more common than to see a man of undoubted capacity in all other respects utterly failing as an Advocate, because he talks over the heads of his juries, and addresses the tradesman and the farmer in a language for whose every fourth word the perplexed twelve need an interpreter.

The language of the people of England is in great part Saxon. The admixture of Latin and Greek words in their vocabulary is very inconsiderable. Almost every name of every object in common life is Saxon. The only books with whose phraseology their minds are perfectly familiar—the Bible and the Prayer book—are thoroughly Saxon. So are most of our provincialisms. The language of our childhood and of our boyhood is Saxon. All our best and most *popular* writers have left us their thoughts in Saxon. It is not until we dedicate our days and years to the mastery of the dead languages of Greece and Rome that we gradually come to substitute the words that have been derived from them for the more expressive words we have received from our ancestors.

And impressed as they are by long familiarity,



the difficulty of again replacing them by the language they had displaced should be fully appreciated, that proportionate exertions may be made for its accomplishment. It will not be a work of a month, or of a year, but of a life. It should be your constant aim from the beginning to the end of your career as an orator. You must read much, and cull your reading ; write, and purge your writing. The books that will help you to the purest Saxon are not very numerous, nor do they need to be, for it will not suffice to read them, and put them aside when read, like books that are perused for knowledge ; but they must be read over and over again, consulted almost daily for the purpose of refreshment “from the pure well of English undefiled.” Fortunately, the most purely Saxon book in our language is one which otherwise you ought to read daily for other purposes,—THE BIBLE,—and from its phrasology there is derived this further advantage, that, besides its Saxon purity, it is so familiar to every ear that there is no audience, from the highest to the very lowest, to whom it does not appear *expressive*, and in whose minds it does not conjure up distinct ideas.

There is another advantage resulting from the use of Saxon by an orator, and which is seen even when he is addressing a classically educated audience. It is eminently *pictorial*. It expresses few abstract ideas. Its words are pictures, and the entire train of thoughts which they suggest are distinct in form and full of colour. It is manifestly the language of a young race whose perceptions

had been more cultivated than their reflective faculties. Hence they are more readily intelligible than the terms of a more refined language, which require some portion of thought to discover their precise meaning ; hence also their peculiar advantage in oratory, where the listener has no time for reflection, when it is necessary that words shall instantly suggest the images the orator desires to call up in the minds of his audience, under penalty of being but half understood. It is this power of word-painting which recommends so many *uneducated* preachers and speakers to popularity—it is the absence of it that deprives the scholar of his influence over an audience and makes them yawn, in spite of all his substantial learning and sound argument, while the self-taught field-preacher or pot-house orator is commanding the ears of his applauding circle. The one talks Greek and Latin, with their refined abstractions ; the other talks Saxon in word and spirit, with its graphic images, its expressions of homely sounds, and its familiar associations.

Nor is this difference of effect confined to the uneducated classes. It extends to all : and hence it is that, whether in Parliament, at the Bar, or in the Pulpit, the greatest and most effective orators have invariably spoken the purest Saxon.

There is another reason why the language of our ancestors is so peculiarly fitted for oratory. It is singularly *imitative*. The sound continually echoes the sense. This may be a mere conceit, but there can be no doubt that it is wonderfully effective, and no aid is to be depised which conduces to the object

of oratory,—the winning of the attention so as to command the feelings and convince the reason. If the sound allied to the sense helps to a more ready or vivid conception of the orator's meaning, he should not fear to use it. And in such words the Saxon tongue abounds. It will suffice, as instances, to name the words—"rush," "hiss," "jarring," "sword" (expressing the peculiar sound of the drawing of the sword from the scabbard, or its rush through the air), "dart," "lady" (an exquisitely expressive word), "roar," "dash," and such-like.

Shakspeare is another book that should be read for its Saxon-English, and to these we would add Bunyan's *Pilgrim's Progress*, Dryden, Swift, Cobbett, and Southey. There are no writers in our language who command such *vigorous English* as Bunyan and Cobbett, and none who use such *pure English* as Southey. An Advocate should read one or the other of these authors every day, that he may keep his mind constantly stored with words apt for his purpose, and uppermost, that they may rise unconsciously and his thoughts come clothed in them, so that he may not need an effort of attention to reclothe them before they issue from his lips.

It is an excellent practice to read these, as well as other, books *aloud*. If in your family circle you can obtain an audience, so much the better; there is a double inducement to the exertion; but if you can find no listener, do not, therefore, neglect the duty. Close your door and read to the chairs,

with the same attention to the *manner* of reading as if you were surrounded by a listening and applauding crowd. You will reap from it many advantages. *Physically*, it will strengthen your organs of speech, and qualify them to endure the labours that will hereafter devolve upon them. *Intellectually*, it will impress upon your mind both the thoughts and the words of the author more vividly than a silent perusal. In reading aloud, the mind is affected by the sound as well as by the sight; the idea is doubly suggested by the printed word and the spoken word, and words especially are more frequently recalled by the recollection of their sound than by the form of their letters. You must acquaint yourself with the writer's meaning, that you may express it properly, and that teaches a habit of attention and accuracy and makes you acute in the interpretation of language. You learn to give expression to the sentiments in appropriate tones, with due emphasis, and thus to utter your own thoughts impressively, when, instead of reading the compositions of another, you speak your own.

The subjects thus read should be continually varied. Narrative, oration, discourse, dialogue, poetry, should alternate, not merely for the sake of variety, but to prevent your falling into a habit of monotony. For this the best practice is the reading aloud of *dialogue*, as it is found in genteel comedy, and in the novel. But it must be read *dramatically*; that is to say, you must read it *in character*, as if you were acting it, changing your

tone of voice with each personage in the scene, and uttering every sentence precisely as you might suppose that such a person in such circumstances would have uttered it. This will be difficult at first; but, as we had occasion to observe before, you must not be deterred by difficulty, if you desire to be an Advocate;—you must try again and again, and you will soon begin to note improvement, which will continue so long as you persevere in your efforts after it.

Perhaps it will be asked, what are the *rules* for reading? They have been attempted often to be defined, but never successfully. The truth is, it cannot be reduced to rule. For, after all, what is reading but the expression of some thought, suggested through the eye by certain signs which represent certain sounds? He who reads well is he who expresses that *thought* naturally—and the best reading is that which most exactly gives utterance to the words, as they would have been uttered by the person from whom they are supposed to proceed. But to be naturally expressed they must be *felt* as well as *understood*. The reader must have in his own mind the emotion of the supposed speaker, or he will not give the very tone;—an audience would constantly perceive the presence of *art*, and their *sympathies* would not be excited. Thence, therefore, it is, that for good reading there is no other rule than this,—*understand and feel*. The rest will follow.

This is, of course, apart from the *mere manner*. That is entirely to be cultivated by the practice we

are recommending of reading aloud to others, if possible, or if that be impracticable, to yourself alone, and without the intermission of a single day. You will probably not be conscious of your defects of *style*, such as an unmelodious voice, provincial pronunciation, and the like faults, and therefore, if you have not a judicious friend who will sometimes listen to and correct you, call in a master, and let him be your monitor. But do not mistake our purpose in this. We are very strongly opposed to the acquirement of the art of speaking from the professional teachers of elocution. Usually, if they teach anything, it is a studied manner, which has the appearance of affectation, and is infinitely more disagreeable than the modest form of untaught speech. If a professor be employed at all, it should only be to warn you what you should *not* do, by telling you of your faults, and not to teach what you *should* do.

Another aid to the acquirement of the art of oratory is to listen to the best orators, and note the graces for which you admire them. The Pulpit, the Bar, the public meeting, will teach you many lessons, and you should lose no opportunity to be present where a speaker of ability is expected. Mark his faults as carefully as his excellences, that you may shun them, and let your own sense of what ought to have been done by him show you what *you* ought to do.

The *Practice* of the Art of Speaking will be considered when we come to treat of the Practice of the Advocate. At present we are dealing only

with the *education* necessary for its acquirement. To enable the Student to speak correctly and fluently, he should exercise himself in *composition* with the pen. It matters little what his subject, he should endeavour to set down his own thoughts upon it, in the order in which they occur to him, and in the language that most readily presents itself, and of this he should daily write a prescribed quantity. On the following day let him revise it, correcting errors, substituting better expressions, rounding rude sentences, expanding some and contracting others. The same process of *polishing* should be repeated at the end of a week, and again at the end of a month. At first, the paper will probably be little better than a great blot; but by degrees he will find the erasures less frequent, and he will not only write with more correctness, but with greater fluency and ease. It is by this process that he may advantageously tutor himself in the use of Saxon-English. Let him mark every word that has a Greek or Latin origin, and endeavour to substitute for it an equivalent from the Saxon. Perseverance in this practice will certainly give him a facility in the employment of Saxon words which could not be acquired by any amount of mere reading.

Another excellent practice is to read slowly and carefully a paragraph from one of our best authors, and then to close the book and endeavour to express *his* ideas as nearly as possible in his words and manner. This done, compare your version of the fact or sentiment with his, and you will dis-

cover wherein lies your fault and his superiority,—what it is that made him so strong and you so feeble.

We are almost afraid to recommend another practice, in itself of great utility, from fear lest it should be abused;—we allude to the composition of speeches upon paper. Our fear is, lest the Student should be tempted, by the habit of composing speeches for an exercise, to write them for actual delivery—than which there is no more fatal practice. Warning the Student against *that*, we would urge him occasionally to *write* speeches upon any subject that may interest him. And here also he may beneficially adopt the same practice of reading the speech of some orator, and then writing one upon the same theme, which, by comparison with the other, will reveal to him his deficiencies more forcibly than any advice of teacher or friend.

Nor should he be content with one essay at the same speech. Having written and compared it, he should again close the book, and again, with the improved knowledge thence acquired, write it from his memory, and again compare it with the original, and even repeat that process three or four times. Each one will be better than the last, and he will find rapid progress developed by a tedious task, in which little *appears* to be accomplished.

At the same time, let him read daily a portion of the best orations in our language; not hastily, as an ordinary book, but slowly, so as to note the structure of the composition, the choice and collo-



cation of words, the selection of topics, the cast of the sentences, the *art* of the speaker. Once should it be read silently, with the purpose of thoroughly understanding it; then aloud, and in oratorical style, as it seems to you it ought to have been delivered, and which will not only be an added help to the impressing of it upon the mind, but will in some measure show you the effect of the speech in its utterance, spoken composition having a peculiar structure and tone which distinguishes it from written composition—a distinction difficult to be defined, but which cannot be mistaken, so that a *written* speech, however fluently and artistically delivered, is invariably betrayed to an audience accustomed to oratory.

But reading aloud the best words of the best authors, and putting your own thoughts upon paper, will not suffice for your education in the Art of Speaking. In that, as in all other accomplishments, it is one thing to know *how* it ought to be done and another thing *to do* it. Hence it is that a man may be, and often is, a very able critic without being an artist, and hence the fallacy of a popular opinion that the critic has no right to sit in judgment on that which he cannot himself execute. Hence also it comes that we so often see men mistaking their own capacities and exhibiting melancholy failures *in action*, although perfectly competent to advise others what *they* should do, and possessing the most perfect knowledge of the course by which alone success can be attained. We have already endeavoured to impress upon the

reader, who may consult these hints before he finally resolves upon the adoption of a Profession, the necessity for the most earnest self-investigation, for the purpose of ascertaining the measure of his capacities *to do* as well as *to think*, and if then he should discover a reasonable doubt of his possession of this ability *to act*, to abandon all thought of a pursuit in which the largest knowledge of what should be done will avail nothing, unless the *power to do* it be present also. But the mere possession of the *capacity* to act will not be sufficient of itself. That capacity must be cultivated by *practice*. The ready and graceful and effective exercise of his art can only be attained by the speaker's perfect confidence in his own capacities for his task, and that can be acquired only by frequent trials, and by failures no less than by successes.

In the provinces, opportunities for a learner's *practice* in the Art of Speaking are rare. A Debating Society is the only school for a beginner. An assembly of men met for the purpose of business will not endure to be made the subject of a tyro's first steps in talking, and it would be impertinence on his part so to use it. He must take his lessons for some time among those who meet with the same object—self-instruction—each enduring the others that he may be endured in turn. Here he may venture to fail, and dare to try again. Here he may talk nonsense or stumble over half-conceived ideas, attach singular verbs to plural nouns, and throw about the *disjecta membra* of sentences in his trepidation at the sound of his own voice.

His audience will be patient and forgiving, for most of them have done, or are preparing to do, the like. If the reader live in a country town where the formation of such a society is hopeless, he must make his way as speedily as possible to London, and there join one, or as we would strongly recommend to him, *both* of the two Societies which have attained to reputation by their long standing—namely, the *Forensic Society* and the *New Forensic Society*—both of them established specially for practice in the Art of Speaking by members of the Inns of Court, to whom they are exclusively confined. The subscription is very trifling. Their meetings are held weekly at Lyon's-inn Hall, on different evenings, and therefore it is that we recommend the Student to join *both*, because he will thus be enabled to practise twice in the week instead of once only. Their rules are excellently adapted to their object. The subjects of discussion are in the proportion of two legal questions to one general one, the latter excluding none but religious topics, political questions being very prudently permitted, because it is most important that the Advocate should learn to preserve his temper in the heat of debate, and nothing is so likely to provoke passion, and therefore to teach the command of it, as political discussions. The order of debate is thus. Each member is in turn appointed to open the question, and two others to follow him, and for omitting to do so there is a fine. When these three appointed members have spoken, it is then permitted to any others to speak, and so until all who please have

declared their opinions, and then a division is taken upon the question, this latter being, of course, little more than a form, the real object of all who attend being the discussion. Great order and decorum are observed, and the utmost toleration is extended to the mistakes or hesitations of inexperience. Indeed, a beginner could not find a more admirable school for his first trials.

Having joined one or both of these Societies, attend two or three of their meetings as a listener, to learn their forms, and to familiarise yourself with the manner of speaking and the strange faces before you. That done, delay not your own *début*. You will fear it, probably, but therefore the more reason for adventuring forthwith. To postpone it will be but to make you the more nervous.

Your resolution taken, prepare yourself for the occasion, but limit that preparation to reading up for the subject, and by short notes of the heads of your intended argument. Do not be tempted to *write* your speech; prefer to that any extent of failure. Better sit down covered with confusion on account of inability to frame a sentence, than speak a speech learned by rote. And this for many reasons. A written speech is always perceptible to an audience as coming from the memory and not from the mind. If you chance to forget any portion of a written speech, you are unable to supply the defect at the moment, and the *hiatus* becomes painfully apparent. If you begin with a written speech, which you throw off fluently, because you are repeating a lesson, you are not thereby emboldened

to attempt an extempore speech on the next occasion, but, on the contrary, you dread to lose your first reputation by the contrast,—and, as is usual, having taken one false step, you are compelled to take another, and so on until, on some unlucky day, you are unable to escape the trial, and you have to undergo the vexation of a failure, which, on your *first* appearance, would have been readily forgiven, but which, coming after a *show* of success, will certainly expose you to hopeless ridicule and deprive you of the sympathy without which it would be difficult for any learner to combat the awkwardness of his first endeavours. Content yourself, then, with a few short suggestive *notes*,—as thus:—

If the subject for discussion be a legal one, the case or cases in which the point arose are stated in the question. You must refer to these cases, and read them carefully, and so also with all the cases therein cited, and to any statutes or text-books treating of the same topic. Having formed your own opinion of the proper solution of the point, proceed to consider the reasons for that opinion, and taking a slip of paper, set these down in order, in the fewest words that will serve to recall them, together with the name, reference, and *point* of the case or cases with which you purpose to support that argument.

If the subject be a general one, you must proceed in like manner to collect *the facts* bearing upon it. Such of these as you are not likely to remember readily, as names, figures, &c., abstract from the authorities, upon a similar slip of paper. Then,

after the same fashion as with the legal questions, arrange your argument upon paper—the *method* of your speech, nothing more,—and to these you should append your notes of the names, dates, &c., that you may refer to them, if need be, without pausing in your discourse.

Having done this, trouble not yourself about *the words* in which you shall express your thoughts; they will come, more or less expressively and artistically, according to your previous studies and natural capacity for eloquence. Practice will, at all events, greatly facilitate the process of expression, and trust to practice alone for its accomplishment. Do not study phrases more than sentences; they smell of the lamp. But, armed with these two little slips of paper, and strong in the confidence that you really know something about the subject upon which you propose to make your maiden speech, go to the meeting and wait tremblingly the moment when, according to the rules, it will be permitted to you to take part in the discussion of the evening.

You rise. Your heart thumps, your knees tremble, your sight 'swims, your throat becomes dry, your tongue seems to swell, perhaps even your mind is a chaos of confusion, your thoughts cease to flow, the very shape and subject of your speech escape from your treacherous memory. You see nothing of the upturned faces around, but eyes fixed steadily upon you, and they seem to be multiplied tenfold—eyes on every side—eyes every where. Then that dead silence; never in your life

have you heard such a stillness—it is unnatural, appalling ; you would give the world for a noise ; if one would only cough, or hiss, or talk aloud, —anything rather than that ominous hush. But vain the wish. The silence is within yourself. Your nerves are paralyzed, you cannot hear better than you can see. In the absorbing anxiety of that moment the only sound that makes itself audible to you is that of your own voice,—and that seems louder than ever before ; it is echoed from each wall ; the husky whisper of your dry and swollen lips is to you like the voice of a trumpet.

And like a trumpet let it be your summons to the strife. The worst part of your trial is over. You have taken your resolution, made the first plunge, endured the first shock, dared to stand upon your feet and open your lips, and now your task is comparatively easy. *You have only to speak on.*

You will stumble, you will hesitate, you will halt even ; thoughts will flow faster than words, and words will come without thoughts ; ideas will trip up each other's heels, and in the *mêlée* you will seize upon them out of their places, producing the last first and first last, and throwing your speech into the most admirable disorder. You will sin against all the laws of grammar ; there will be no respect for gender, or number, or the rules of *Murray*. Sentences begun will never come to an end ; interminable parentheses will land you at the opposite argument from that with which you started. You

will be teased by tautologies; your intended order of discourse, however skilfully framed, will be forgotten, and you will find yourself "in wandering mazes lost."

No matter. *Go on.* Say anything, however nonsensical or ungrammatical, rather than pause to cast about for something better, or resume your seat in the silence of confessed incapacity. In the first place, if you permit yourself to be defeated now, you will scarcely again find courage to endure the same ordeal, with the memory of the former failure added to the same difficulties as then oppressed you. But there is another reason for proceeding. Nothing is so painful and annoying to an audience as hesitation, pauses, recalling of words and such like signs of perplexity in a speaker. Nothing is more generally approved than *facility* of discourse. By nine persons out of ten, a fluently delivered speech will be preferred to one hesitatingly delivered, even if the latter be full of wisdom and the former the mere froth of words. It is not with the *orator* as with the *writer*—with the *listener* as with the *reader*. The business of the *speaker* is to make his audience hear him, and then to appeal to their common sense and their feelings; to satisfy the one, by putting the facts so that the conclusions to be drawn from them shall be palpable to common understandings, and to persuade the other by the power of sympathy;—the task of the *writer* is usually to address the profounder intelligence, and to convince by logical process of argument. So it is with an audience.



The listener to a speech has no leisure to pursue a long chain of reasoning, nor accurately to criticise the structure of sentences and the choice of expressions as they fall from the speaker's lips. His attention is engrossed by the words that come and are coming; he is anticipating rather than reflecting, and looking for the speaker's meaning, or sharing his emotions, instead of meditating upon his language. Hence it is that speeches which seemed so excellent, when heard, often appear so tame, flat and senseless, when read in the Reports: hence imperfections in the structure of sentences, in the choice of expressions, even in the grammar itself, recognised and painfully felt by the orator, are frequently scarcely perceived by his audience, who have not found time to criticise, because they have been employed in *hearing*. So universal is this that, within our own experience, and that of all with whom we have conversed upon the theme, a speech has not been made that did not appear to the speaker far more imperfect than it seemed to the audience.

Therefore, we repeat, *go on*—say *anything*, however nonsensical, rather than stop even for an instant. If your audience perceive, they will forgive, for they have known the same difficulty and proved the same trial. Your manner will certainly show that you are in a state of profound agitation, and scarcely master of your senses, and that will save you from suspicion of incapacity. The more you are flustered, the more hope there is for you. The only hopeless case is, where the youth rises, for the *first* time, cool

and confident, and spouts pompous commonplaces with the assurance of a practised orator. Such a man *never improves*. He shows you at the beginning all that he has in him, and he may be thenceforth looked upon as *the bore* of the Society. But all who have large capacities and great store of knowledge and of wisdom packed away in their minds, which can only be brought out by degrees, as occasions require,—the men of genius,—the sensible men,—the able men,—having within themselves a much loftier standard of excellence than they possess the capacity to reach, are conscious of their short-comings and defects,—have a thousand thoughts for which they cannot find expression, and so are abashed and fearful at the beginning of their speech. Nor does this agitation cease to return until very great practice indeed—extending over years—has gradually subdued it. It will even revive when, after illness, or the pause of the vacation, they reappear for the first time. Such, we believe, is the experience of almost every successful speaker. It is said that Sir Thomas Wilde never rose to address a jury without being sensible of a nervous tremor. Mr. Serjeant Wilkins, the style of whose oratory would be supposed to express the very opposite emotion to diffidence, has assured us that, even after his great practice, for the first three or four minutes of every speech his hands tremble and his sight swims. We have heard a similar remark made by other public speakers, both in Parliament and in the Pulpit. Let these facts, therefore, encourage you to proceed, in spite of any

amount of trepidation you may experience, not on your first attempt alone, but even although it continue for a long time. *Of itself*, it is no very formidable impediment to your success as an Advocate; it is rather a proof of capacity in other respects; time and practice will certainly so far subdue it that it will become a slight inconvenience only. Besides, it is more apparent to yourself than to your audience, and if it does not amount to actual confusion of ideas and annihilation of words, it gives a subdued tone to the voice, a modest manner, and a deferential aspect to the countenance, which are rather pleasing to an audience than otherwise, and the very hesitation and other signs of nervousness at the beginning produce a favourable contrast with your bolder aspect afterwards, when, in the glow and excitement of speech, the eye flashes, the face is lighted up, and the fearless confidence of a great duty faithfully discharged animates the whole being.

Having spoken some ten minutes, or thereabouts, sit down, although it may be you have not said a twentieth part of the things you intended to say. Remember that you are as yet but a learner, and that you are talking entirely for your own benefit, not for the advantage of your audience. Inasmuch as they, like yourself, have come rather to talk than to listen, they will bear with good humour for a reasonable time your "bald, disjointed chat;" if you are ever so hesitating, they will look at you with sympathy, and they will kindly cheer every sentence you may be fortunate enough to complete. But you must not misunderstand this applause—it is

not admiration, but charity—and you must be especially careful not to abuse it. A party of young men, learners, like yourself, will encourage and help you in your lesson, but you must be merciful in return, and not inflict upon them too much of your tediousness. Ten minutes of it is quite as much as ordinary patience will endure, and if you do not trespass beyond those bounds, you will establish yourself in the favourable opinion of your fellows, who, on the next occasion, will see you rise with complacency, and continue their encouragements, from which you will derive very great assistance in your early trials.

The ordeal is now over, and you will feel as relieved from an anxiously-anticipated danger; you will rejoice greatly, your spirits will rise, and perhaps you will imagine yourself already an orator. Because you were not altogether struck dumb, you are very likely to suppose that you have succeeded, and that you may now proceed, with confidence that you have the great qualifications for an Advocate. This, however, is the very time when it behoves you to institute the most careful and serious self-interrogation, because it is the last, and you have now an opportunity to retreat, if you are not assured that it is safe to advance in the career you have chosen. Permit two or three days to remove the excitement of the trial, and then, calmly, soberly, and as impartially as you can, set yourself to review the incidents of your first attempt, and, if you are fortunate to have had a judicious friend among the audience, call him to your council.

Pursue your self-examination upon paper: it is more likely to be correct and complete. *Litera scripta manet*. The confessions there made cannot be evaded by the legerdemain in which the mind is so apt to indulge when dealing with its own imperfections. The first fault admitted cannot be forgotten before the last is catalogued, as is customary in a merely *thoughtful* self-review. Take, then, paper and pencil, and deliberately asking yourself, "What were the difficulties I really found in my attempt to speak that speech?" proceed to set them down as they recur to you.

Was there any impediment to your thoughts? Had you any distinct and definite ideas upon the subject you were speaking about? Did they come quickly or slowly? Are you *conscious* of capacity or of incapacity? What were the powers of your voice, of your lungs? In what did you fail? And wherefore?

You have now enjoyed the opportunity of putting your abilities to the test. All that you have dreamed of your capacities, all that you have learned of the rules of the art, all your large resolves and grand imaginings, have been reduced to the sober standard of experience. You may know now what you can do, and what you cannot do; be it your care to ascertain the very truth, for the future prospects of your life depend upon it.

If, in reviewing the trial you have made, you are satisfied that you had no other defects than such as proceeded from the agitation natural to your position,—if you *had* thoughts, but only were unable

to produce them in proper order and clothe them in becoming words; if words came to your lips, only you were too disturbed to cull them;—if your breath did not forsake you, but only was impeded by the beating of your heart;—if your voice endured to the end, and your lungs were not exhausted when you sat down;—you may be satisfied that the defects of your first appearance were but the accidents of the occasion, which time, patience, and practice, will subdue, and that you may anticipate with confidence a reasonable success in the career upon which you have entered. Go on, then, with cheerfulness and hope, and prosper!

But if, in very truth, it was that you did not frame a consecutive discourse because your mind was a vacuum;—if it was not that your thoughts were confused, but that you had *none*;—if you were *unable* to forge a chain of argument;—if your ideas arose, isolated one from another, with no visible link between them;—if words would not come at all, or but so slowly as to produce the hesitations and pauses with which you vexed your audience;—if your voice failed from inherent feebleness, or your lungs were exhausted by the exercise,—then, in either of these cases, you will consult your future happiness by at once manfully turning from a profession in which you *cannot prosper*, and dedicating yourself to some other pursuit, which, if less attractive to your ambition, will be more conducive to your substantial welfare. Whatever poets may sing, wisdom teaches that it is better to flourish in a humble calling than to fail in a lofty one. Who

can measure the pangs daily endured by him who, at once proud but poor, ambitious but incapable, sits hour after hour and year after year at the Bar, and sees briefs flying over his head, to his contemporaries first and then to his juniors, who are passing him in the race for fame and fortune, and who feels the best years of his life gliding from him in cheerless and hopeless inactivity. Far happier would he have been in some more humble sphere, where the faculties he possesses might be successfully employed, than thus to pine his life away in the obscurity and neglect that are the fate of the wig and gown that do not cover a mind endowed by nature and by study with that rare and peculiar combination of faculties that are essential to the Advocate.

## XX.

### PRACTICE IN CHAMBERS.

THE range of study that has been described is to be pursued, partly before and partly during, that necessary portion of an Advocate's education,—the acquirement of *practical law* in the Chambers of Counsel. Some difference of opinion prevails, both with respect to the branches of practice that should be thus sought and the time that should be devoted to them. Something must depend upon the circumstances of each case. Thus, a Student who has previously enjoyed the incalculable advantage of a seat for two or three years in an Attorney's office, needs to devote very much less time to the teachings of Chambers, because he is already half instructed, and is competent to understand the business that comes before him from the first hour of his entrance; while the Student to whom the practice of the law is altogether strange must consume some weeks, or even months, in mastering its mere alphabet. Again,



he who is bent upon advancement, and resolute to devote to his studies the full measure of time demanded for them, will not waste the hours that are at his own command before he enters upon Chambers teachings, nor will he throw away a moment of his time after he has commenced them. But not less than *eighteen months* will suffice for those who are the best prepared and the most industrious, and *three years* should be preferred by those who have had no previous acquaintance with practice, or who are conscious of an irresolute will to persevere in such a system of self-education as we have already described.

But, whether the term of three full years, or but one-half of that period, be resolved upon, in either case the same *course* of training must be followed; *three* different classes of Chambers must be resorted to; those, namely, of a Conveyancer, of a Special Pleader, and of a General Practitioner, and in the order in which they are here named.

But this is upon the assumption that the Student contemplates the Common Law Bar. If he purposes Equity Practice, he must substitute an Equity Draughtsman for the Special Pleader.

The *practice* of Conveyancing is essential to the acquirement of the Law of Real Property. A merely theoretical knowledge of that law will be found insufficient for the Advocate, who will have to deal with its *forms* even more frequently than with its *principles*. If the Student has well read before he seeks the experience of Chambers, he may attain a sufficient mastery of it for his purposes as an Advo-

cate, in the course of *six months* of assiduous labour with his pen, accompanied with the teachings of an intelligent instructor. But, if he have not previously laid a broad foundation for practice, by extensive study of books, twelve months of diligent toil will scarcely suffice to qualify him for his duties. If his object be the Equity Bar, in *no case* should less than twelve months be devoted to the Conveyancer; nor less than two years, if he does not bring with him a large amount of knowledge already acquired.

Passing thence to the Chambers of the Special Pleader or Equity Draughtsman, according to his future destination, the same rule should regulate the periods of study. If well read in the law, *six months* sedulously devoted to the practice of pleading will suffice for the Advocate to learn so much of it as *he* will need, unless he purposes first to practise as a Special Pleader. But, if that be his design, or he be previously ignorant of the *practice* of the Common Law, he must dedicate a twelvemonth at the least to this branch of practice.

And the like considerations should determine the period of study in the Chambers of the Equity Draughtsman.

The Student should devote the last portion of his studentship to the Chambers of a Common Law Barrister in general practice, where he will see and learn the various forms of business, as they occur to a man who is rising in his Profession. The Advocate will find this, albeit so rarely resorted to, the most practically useful of his Chamber studies,

and therefore it has been recommended as the latest of them. Here he will learn to apply the knowledge he has gained in the Chambers of the Conveyancer and the Pleader; here he will become familiar with many matters of form, trifling, indeed, in themselves, but ignorance of which often exposes an Advocate to more reproach than defects of a more substantial nature. He will learn here precisely that which he will need to know at the very commencement of his career, especially if the Counsel with whom he is studying discharges his duty faithfully, and takes some trouble to explain to him, not merely the law, but the *details* of *practice*, such as the manner of reading and noting a brief;—the application of the law of evidence to particular facts;—how an opinion is to be formed and given;—the advising upon evidence, and so forth. It is while reading thus in the Chambers of one who is himself an Advocate that the Student should attend with him the courts, at the trial of the cases that have come before him in Chambers. There he will witness the practical application of the rules he has learned; he will understand more thoroughly the purpose of the tactics that had been recommended or resolved upon; he will comprehend the meaning of much that appeared obscure, and, having been behind the scenes, he will trace the tact and skill with which the case is conducted, and which are apparent only to those who are acquainted with its difficulties. An excellent exercise in this portion of the course of Chamber Training is for the Student to read the briefs that

come in, with the same attention as if their conduct was to be intrusted to himself. Let him take paper and pen and shortly draw an outline sketch of the manner in which he would treat the case had it been his own; what flaws he can find in the evidence, what points of law he can raise upon it, and the arguments by which he would seek to win a verdict from the jury. Then let him attend the trial, and mark the difference between the manner in which it is actually conducted by his experienced instructor, and note the points *he* raised or omitted, with their results. If he cannot discern the reason for the course pursued, or any portions of it, he should make inquiry from his friend wherefore he preferred such and such a treatment; and having ascertained the motives, he should carefully compare the actual conduct of the cause with his own anticipations of the manner in which, as it seemed to him, it ought to be handled; and thus he will learn in some sort the measure of his own abilities, and how far he approached to or fell below the skill of the Advocate, and where he finds a difference he should endeavour to ascertain the causes of that difference. He will learn more from half a dozen of such exercises as this than from any quantity of mere reading.

In like manner, when a case comes into Chambers for an opinion, he should make a point of reading it, and writing, for his own instruction, his own opinion, after due research into the books; and when the opinion of his tutor has been given, he should copy it upon the same paper with his

own, and compare the two carefully, so that he may trace the defects in his own knowledge, besides acquiring the habit of readily reading a case and forming and expressing a clear judgment upon it.

And should there be some leisure moments, they may be profitably employed thus:—Taking any of the volumes of the Reports, find some case in which the pleadings are set out, and upon some alleged defect in which the arguments turned. Reading no more than the facts, let him draw similar pleadings, without resorting to *the report* for help, but employing any other books he pleases. He should then compare his own pleading with that set out in the report, and observe whether he has avoided the same blot, as he will learn it from the argument and the judgment.

It should also be a rule with him to attend the hearing at Westminster of every case of any interest that comes before him in Chambers; for he will understand the proceedings, and the manner in which it is conducted, and thus acquire a far more accurate knowledge of the law and its application than would be possible from any attention given to a case previously strange. But we do not recommend daily wandering to the courts, in the absence of some such *special* attraction as this, for the time so spent rarely yields an equivalent profit. It is very difficult to sustain the attention to the pitch requisite for a perfect comprehension of the proceedings in a matter in which no personal interest is felt; and the hours thus expended are, it must

be remembered, but so many stolen from a long and severe course of study, besides disturbing its order and diverting the current of thought.

The Student will, perhaps, ask of us to suggest to him some rules for his guidance in the selection of Chambers in which to pursue the practical part of his education. Shall he prefer those in which the business is much or little; is he to be influenced by a name of note; should he go where many or where few pupils are to be found? Here, as usual, the middle course is the surest and the safest. There is an ample range of choice, and the selection should be made with reference to all the circumstances of each case, and, yet more, upon some knowledge of the habits of the man to whose tuition he is about to intrust himself. The Counsel who is overwhelmed with business cannot possibly find time to impart to his pupils personal instruction; they will necessarily be left to pick up their knowledge as they can from the papers that pass before them. So, where the business is trifling, the teachings of the tutor, however zealous, will not compensate for the deficiency in practice. It must be remembered that the very purpose of the pupilage in Chambers is to witness the practice of the law which the Student has learned or is learning from his books; he does not expend his hundred guineas to be taught *vivâ voce* the theory of the law, which he can acquire as certainly from five pounds' worth of printed paper, but that he may learn how to *apply* his knowledge to practice, and what he is *to do* when business is brought to him. The Pleader,

the Conveyancer, or the Counsel, having a business that occupies only a portion of his time, will be very preferable to the *famous* man who has not a moment to spare from his papers. Again, we would earnestly recommend the Student not to go where many pupils resort. In every respect it is a disadvantage to sit in crowded Chambers. The opportunities for instruction are lessened by division, and the interruptions to study are incalculably increased. Choose, if they can be found, Chambers in which, alone, or with one other at the most, you may procure the *personal instruction* of an intelligent tutor, who has both the ability and the will to *illustrate* his teachings by his practice.

## XXI.

### THE INNS OF COURT.

HAVING thus endeavoured to describe the substantial education of an Advocate, so far as it may be self-directed, and which it is at his own option to cultivate or to neglect, neither advancing nor retarding his admission into the Profession, although it will wholly govern his after fortunes, we will now dedicate a chapter to a review of the formal and nominal studentship, whose duties must be performed in order to qualify him for his call. We purpose to describe the Inns of Court, and the Law Student's connection with them, from his admission to his call to the Bar.

There are four Inns of Court, at either of which a qualification may be obtained for a call to the Bar; namely, Lincoln's Inn, the Inner Temple, the Middle Temple, and Gray's Inn.

Lincoln's Inn is usually preferred by those who contemplate the Equity Bar. Custom has consti-



tuted its precincts the locality of Equity Counsel and Conveyancers, and very few, if any, members of the Common Law Bar have their Chambers within it. The Student's choice between this and the other Inns should, therefore, be determined by his destination. If he purposes to practise as a Conveyancer, or at the Equity Bar, he should enter himself at Lincoln's Inn.

But if he designs to practise the Common Law, either as a Special Pleader, or immediately as an Advocate, his choice lies between the Inner and Middle Temple and Gray's Inn.

In point of time, we believe, he gains no advantage at either. An uniform rule has been lately adopted by all of them. But there are some other considerations which will deserve to be weighed.

At the Inner Temple he will have to undergo an examination in the classics. It is by no means a formidable ordeal, for it is rather a formality than a reality; but it is sufficiently inquisitive to make it an obstacle not to be encountered by one who has not received a classical education. But the knowledge acquired at school will suffice; the training of a university is not essential, however desirable.

At the Middle Temple no such test is applied, and the consequence is, a more miscellaneous assemblage of Students than at either of the other Inns. In repute it stands higher than Gray's Inn, and it is more accessible than the Inner Temple. Hence its numbers.

Not long since the Inner Temple required Terms

to be kept for *five* years by those who had not taken a degree at one of the Universities, but extending to the latter the privilege of a call after *three* years. The result of this arrangement was practically to constitute its members almost exclusively of University men, and the new regulation for admitting all candidates after keeping twelve Terms has not yet destroyed the *prestige* produced by its former exclusiveness, and hence it must be admitted that the Society is more *select*, although probably it does not present such a remarkable amount and variety of talent as its more hospitable neighbour, the Middle Temple.

In number of members, and as the resort of the men who hope to "achieve greatness," rather than of those who are "born great," the Middle Temple offers by far the most varied society. Hence advantages and disadvantages. The Student cannot be so secure of his associations; but, on the other hand, he will have more to animate and incite to enterprise in the characters of the men by whom he is surrounded. There is the difference between the scholar and the man of the world; between the College and Westminster Hall. Upon the whole, while fully appreciating the advantages of the loftier tone of sentiment and the greater refinement of the select Society of the Inner Temple, gathered as it is for the most part from the Universities, we are inclined to give the preference to the more mingled company of the Middle Temple, reflecting so much more faithfully the busy world without, for which it is no despicable preparation.

It will be seen presently, when we come to describe the customs of this Inn, how such a result may be produced.

Gray's Inn, for some undefined cause, has been long out of favour with the Bar, and very few Students resort thither, although it spreads a more liberal table for its guests than either of the other Inns. Whatever the occasion, it is undoubtedly the fact, that not only are the Students far less numerous here, but an absurd and unfounded idea of inferiority attaches to them; it raises the question, "*why* did he prefer it," and suggests explanations which, in nine cases out of ten, are erroneous, but the mere suspicion of which is unpleasant. Recently great efforts have been made by Gray's Inn to regain its place in the estimation of the Profession, and to obtain its fair proportion of the candidates for forensic honours; with what success is yet to be proved; but nothing is so difficult to subdue as prejudice that associates inferiority with any Institution, and we fear that, without some very extraordinary attractions to turn the scale, the Student will prefer to call himself of the Inner or Middle Temple rather than attach Gray's Inn to his name. Nor could we honestly advise him otherwise, even though we are fully sensible that there is no substantial reason for the difference of reputation.

Having made choice of his Inn, the next step of the Student is to procure his admission as a member of the Society.

For this purpose he must obtain the certificate

of two Barristers, members of the Society, together with that of a Benchers, that he is a fit person to be received into it. Formerly this duty was very laxly performed by the certifiers, and the consequence has been the admission of many persons of questionable character, to the no small discredit of the Profession. But latterly, we are pleased to be able to say, much more caution has been exercised, as well by the Barristers as by the Benchers, in affixing their names to such a certificate. Indeed, it never should be done without either a personal knowledge of the applicant, or such an assurance from one who knows him well, as may remove all doubt as to the propriety of his admission to a society of gentlemen. The Benchers should be still more cautious than the Barrister, because he is in a more especial manner the guardian of the honour and interests of the Society and of the Profession to which it is the pathway, and the time to prevent the endangering of either by the admission of unworthy characters is now, at the threshold, when it may be exercised with the least possible inconvenience to the individual and the Bench; for it is very difficult to refuse a call to the Bar after the sanction given for admission to the Society and years devoted to preparation, and therefore lost to the Student. We repeat, therefore, that it is with much satisfaction we record the resolution of the Benchers for the future to exercise much greater strictness than hitherto in giving the sanction of their certificates for the admission of members to their several Inns.

But it is not thereby intended that they shall require a *personal* knowledge of the candidate; such a rule would in effect exclude hundreds of fit persons who may not have the good fortune to enjoy the personal acquaintance of a Benchers. It means this only: that they will not sign a certificate as a matter of course when it is put before them, or in reliance only upon the names of the Barristers appended to it; but, if they have not a personal knowledge of the applicant, that they will require a *personal voucher* from some person to whom he is known, and that they will make inquiries into such *particulars* relating to him as shall satisfy them that, assuming the answers to be correct, the description is satisfactory.

Having obtained this certificate, the Student is admitted as a matter of course; but if he is not a member of one of the Universities he is required to deposit with the Treasurer the sum of 100*l.*, which is retained without interest until he is called, and then applied in liquidation of his fees. He must also enter into a bond with two housekeepers as sureties for payment of his Commons and Term fees. The fees for admittance are not heavy, and they are required to be paid at the time.

At the Middle Temple, he then receives from the Treasurer an order for his admission to the library, which is open daily from ten o'clock till five, and contains a good collection of standard law books, and all the reports, ancient and modern. Great facilities are afforded for reference and writing; the room is warm and comfortable, and he will find it

a convenient resort for information not contained in his own chambers.

He will not need to purchase a Student's gown. For a trifling Term fee he procures one from the porter at the Hall, which serves for the purpose of dining, the only occasion on which he is required to wear it.

These preliminaries completed, he is now fairly on the road to the object of his ambition. He is a member of a Society which has ever contained, and still boasts the possession of the greatest men his country has produced, and he must be dull indeed if the reflection does not inspire a resolve by industry and self-control to emulate their toils, their self-denials, their dauntless hopes, their conflicts, and their triumphs.

In the next chapter we will attempt to sketch the scenes of a Law Student's Life, as they are exhibited at the Inn of Court which is our own *alma mater*—the Middle Temple. With trifling variations, it will be a picture of the rest. And we will use the painter's privilege, and endeavour to make *a subject* of it.

## XXII

### STUDENT LIFE IN THE TEMPLE.

FEW of those who swell the living tide of humanity that rolls through Temple Bar from morning to midnight all the year round are conscious that, within a few yards' distance from the din that stuns their ears and the motion that wearies their eyes, there is a region dedicated to quiet!—Reader, when next you traverse that great artery of the metropolis, having passed the city boundary at Temple Bar, advance a few steps, until you see a small open gateway on your right. There pause, escape from the restless crowd that is treading on your heels as you move, and will tread *upon* you if you stand still for an instant, and though the path guarded by that gate looks gloomy and of doubtful character, fear not, but advance.

A few paces, and you are beyond the roar of wheels and the tramp of feet. Tall, gloomy, smoke-embrowned buildings, whose uniformity of dullness

is not disturbed by windows incrustated with the accumulated dust of a century, hem you in on either side, and oppress your breathing as with the mildewy atmosphere of a vault. The dingy ranks of brick are broken by very narrow alleys, and here and there, peeping under archways, you may espy little paved court-yards, with great pumps scattering continual damp in the midst of them, and enclosed with just such dusky walls and dirty windows as you have already noticed. You are amazed at the silence that prevails in these retreats, so near the living world, and yet so entirely secluded from it. But not less will you be interested by the peculiar appearance of the persons you meet in this place. The majority of them carry packets of written papers tied about with red tape, and folded after a fashion here invariably observed. If you love natural history, and have invented a new system of classification, or write essays on philosophy in general, or have made speeches at the British Association upon the varieties of the human race, you will at once recognise five distinct species of the genus *Homo* as frequenting this locality.

First, and most abundant, are certain short, thin-visaged, spare-limbed, keen-featured, dapper-looking men, who appear as if they had never been young and would never be old, clothed in habiliments of sober hue, seemingly as unchangeable as themselves. They walk with a hurried step, and a somewhat important swing of the unoccupied arm. A smaller packet of the aforesaid tape-tied paper peeps from either pocket; they look right on and hasten forward



as if the fortunes of half the world rested upon their shoulders, and the wisdom in the briefs at their elbow had all been distilled from the skull covered by that napless hat. If you do not move out of the way, you will probably be knocked down and trodden upon by them—unconsciously, of course. They are *Attorneys' Clerks*.

The second species found in this region are more youthful in aspect, carry themselves with more swagger, wear their hats jauntily, with greasy curls coaxed to project beyond the brim. They affect a sort of second-hand gentility, cultivate great brooches, silver guard-chains, and whiskers, and have the air of persons claiming vice-royalty in the dominions in which they live and move and have their being. They are *Barristers' Clerks*.

The third class are gentlemanly but very shabbily-dressed men, who look as if they were thinking of something beside themselves. They are of all ages, and statures, and complexions; of feature of all degrees of ugliness in *form* and beauty of *expression*. You cannot mistake them; there is a family likeness running through all of them. They are *Bar-risters*.

The fourth species are composed of men of busy, bustling aspect, arrayed for the most part in garments of formal cut, and of the fashion of a by-gone day. They *always* look as ordinary men do when told on some pressing emergency to "look sharp." Their countenances, motions, and gait, express thought and anxiety. They hurry onward, noticing nothing and nobody. They are *Attorneys*.

Lastly, you discern a few wasted forms and haggard faces, on which lines are traced by the icy finger of Disappointment, and garments, growing ragged, ill protect from the keen draughts that play through these passages hearts aching with the sickness of hope deferred. The pockets, though tightly buttoned, are lank and light. They step briskly and eagerly onward, if entering; they creep slowly, if passing out toward the street. They are *Clients*.

Approach the puffy personage who leans motionless as a statue against the wall, basking in the yellow ray of light called sunshine, with his hands in his pockets, his eyes half closed, a very clean apron, and a brass ticket depending from his neck; inquire of him the name of this strange locality; he screws his well-fed cheeks into a self-complacent smile, and tells you that you are in THE TEMPLE.

Much marvelling that such huge masses of building should be tenanted solely by those whose business it is to dispense law, you emerge suddenly upon a fine open area of bright green turf, surrounded with beds of flowers, rows of leafy trees, broad gravel walks, and seats in shade or sun, where you may rest and enjoy the season. If the day be sunny, crowds of merry children are running and rolling upon the turf, as if they were anywhere but in the heart of a great city; ladies are strolling to and fro, breathing the fresh air, and rejoicing in the flower-treasures that invite the eye; groups of Law Students are lounging there, laughing and talking: and a few solitary youths, with pale faces and earnest eyes, are poring upon great books in professional bindings,

heedless of the attractions of tree, or flower, or child, or woman.

The garden is bounded by the river, and as you walk upon the bank you see once again the signs of a city. Steamers vomiting forth sulphurous smoke glide by continually; laden barges turn heavily round and round; the tide flings its refuse at your feet, and the breeze, that ever sweeps over the surface of the water, bears with it the shouts of watermen, lightermen, bargemen, and sailors. It is a stirring sight.

And you reflect that this garden scene—this patch of *real country*—this calm and pleasant retreat—where the most fidgetty of readers may pursue his studies without interruption, — lies within little more than a gun-shot of Fleet-street—in the very heart of London; that the flood of business, with all its cares, and hopes, and fears, is ever rolling on so near to you, and you hear it not, see it not, heed not its neighbourhood; that thousands daily pass it by with anxious brains and ruffled hearts, without so much as discovering that there is peace and rest so near them, little thinking that the calm of nature reigns within a few steps of the busy spot where city life is concentrated. It is strange.

Reluctantly you quit this quiet place, and plunging again into the mob of buildings, you reach a gravelled area, at the further extremity of which you are surprised to see another little garden-plot, in the midst of which a fountain plays continually, making the air cool with its spray, and sprinkling

even the loftier branches of the trees and shrubs with which it is crowded. Approaching this green spot, you see on your left another gravelled flat, and beyond that a small but very verdant and neatly-shaven lawn, bordered by flower-beds, and traversed by smooth paths, reaching down to the river. The breeze from the water blows upon you refreshingly as you gaze with longing eye. Here, in this garden of the Middle Temple, there is no human presence to disturb the profound quiet of the place, as in the more spacious garden of the Inner Temple which you have lately quitted. Seats are scattered about, and pretty summer-houses invite to study or contemplation, but they are unoccupied by any visible presence. One is inclined to imagine that the Benchers have dedicated this garden to the exclusive occupation of the *dead* luminaries of the law, as the garden on the other side is devoted to its *living* oracles. With such a fancy, we always feel disposed to take off our hat to the invisibles, as we pass the tranquil spot where we suppose them to be "doomed for a certain time to walk."

Turning again, and starting from your dream as you behold the endless piles of unromantic brick before you, you cannot fail to notice a red building on your right, the exterior of which has little noteworthy; but, as you are in a mood for exploring new regions, and you are making bets between your right hand and your left whether it be a church or a dissenting chapel, a school or a hospital, you ascend the flight of steps, and, curiously opening

the heavy door, find yourself in a passage, the aspect of which almost establishes the bet of right hand, that you are in a building dedicated to divine worship; for panels of dark old oak, richly carved, line the sides and ceiling, and doors of the same sober material admit to the mysteries within.

Open and enter. Let not your admiration check your advancing steps until you have reached almost the end of the magnificent room in which you find yourself. There pause, and, as soberly as you can, survey the Hall of the Middle Temple.

It will amply repay the inspection of an hour. Mark, first, its beautiful proportions. Look, then, at the roof of pendent oak, where strength is, by the artists' skill, made to appear as the most light and elegant tracery; rafters, which commonly deform, are so constructed as to become ornaments, and the eye loses itself delighted amidst lights and shadows, each making some beauty manifest, or courting the imagination to picture some perfection veiled in gloom, which it cannot distinctly see. You turn your gaze upon the walls, panelled with oak from the very floor, and in each panel, for nearly half the height of the room, is painted the armorial bearings of some one of the Benchers who has filled the office of Reader to the Society, and among them you will recognise names of legal luminaries familiar to all law students. These painted panels are in themselves a history, and their dates and mottoes suggest many serious reflections.

. But the pride of the Hall is the magnificent

screen of elaborately-carved oak beneath which you had entered. Tradition says that the wood of which it was framed was taken from the Spanish Armada, and presented to the Society by Queen Elizabeth. Whether this story be true or false, certain it is that the oak is very old, and that the most astonishing skill was exhibited by the artist by whom it was carved, for nothing can be more tasteful in design and bold in execution. It is reported that George the Fourth offered the Benchers an immense sum of money for this magnificent relic, but they wisely refused to strip their hall of its most valued ornament.

At the further extremity is a platform, slightly raised, on which the Benchers sit, apart from the less dignified members of the Society. Above them hang some choice pictures, portraits of the Stuarts, all by great artists—one of them a gem—a Vandyke—or a copy. It must be familiar to most of our readers through the numerous engravings scattered about the country.

The effect of the whole is much heightened by the judicious manner in which the light is thrown from windows that do not glare upon the eye, and the dim religious hue of which is enhanced by its passing through crimson curtains drawn over them with commendable discrimination, as if the butler had an eye for the picturesque in architecture.

But, before you depart, you will be curious to learn what are the uses of this hall, what the forms and ceremonies observed there; for you cannot fail to be thinking that, in so noble a relic of old times,

the *genius loci* must influence the manners of those who tenant it. As we do not remember ever to have "read in tale or history" the doings at the Inns of Court, though College life has found hundreds of faithful sketchers, we will endeavour to supply this void in topographical literature.

It is well known that a wig and gown are obtained by eating a certain number of dinners, according to certain prescribed forms, in this glorious old hall. But the Benchers have bowels. They enforce the actual swallowing of *three* dinners only in each Term, though, constructively, the Student devours fourteen; that is, he pays for them. This manner of admission to a noble profession has been made the theme of many a sorry jest among the ill-informed; but, in truth, it is as good a form as any other that could be adopted. The Bar is the only profession in which it is *impossible* for a man to impose upon the public by pretending to abilities he does not possess. A medical man may kill his patients by mismanagement, and none know it; an attorney may conduct his client to ruin, without the client's suspecting it till he finds himself in prison; for in neither of these professions are the employers sufficiently well skilled to form a correct judgment of the proficiency of the employed. But a Barrister is retained by skilful lawyers; he conducts his business in open court, before a multitude of witnesses, many of whom are more learned than himself, and with a judge ever near to correct him on the instant. Hence no examination, no peculiar test of knowledge, is so needful in his case, as in that

of other professions; it could add nothing to his respectability, nor to the security of the public. However the ease of admission may crowd the Profession, we believe it will not be found that, in this instance, "in the multitude of *counsellors* there is wisdom," and practically the business will go to those only who are competent to conduct it, be the number of aspirants great or small. But, if the learning *required* for mere admission to the Bar is little or nothing, the unavoidable expenses are so heavy, that they ought to deter any man from joining it who has not some certain income independent of its precarious emoluments. This necessary union of education and property is, in the long run, a sufficiently accurate test that a man is a gentleman, and, without education and some property, no man in his senses would venture on a profession to which they are *essential*, while the strictness exercised in the recommendations required from two Barristers and a Benchers, before admission to membership of the Society as a Student, constitutes practically a guarantee for character.

Shortly before the hand on the dial over the doorway points to five, crowds of gentlemen may be seen hurrying through the labyrinthine paths that intersect the Temple in all directions and concentrating at the yard before the hall, for dinner there waits for no man, and, better still, no man waits for dinner. Gowns are provided for the Student in the robing room, for the use of which a small Term fee is paid, and, thus habited, he is introduced into the hall, of which we have at-



tempted a faint description. But it is now no longer hushed and sombre, but a scene of brightness and bustle. The tables are spread for dinner in close and orderly array; wax-lights in profusion blaze upon them; a multitude of gowned men are lounging on the seats or talking in groups, or busily looking out for the most agreeable places, which are secured by simply placing the spoon in the plate. Suddenly a single loud thump is heard at the door. All rush to their seats: it is opened wide: the servants range themselves on either side, and between their bowing ranks behold the Benchers enter in procession, and march to the dais allotted to them. The steward strikes the table three times with his hammer to command silence, says a grace before meat, and the feast begins.

According to Mr. Addison, it *was* a feast once—a mighty spread. In these degenerate days it is a respectable dinner, nothing more. Soup, a joint, a tart, and cheese, constitute the ordinary fare. Each day of the week has its prescribed mess. A sirloin of beef alternates with a leg of mutton, except on Saturdays, when the shoulder of a sheep is the appointed dainty. The pastry is remarkably good. During the winter Terms it is of apple; in the first spring Term, of rhubarb; in the second, of gooseberry. On Sundays, a plum-pudding is substituted.

The Benchers' tables are ranged upon the dais, across the hall. The tables in the body of the hall are placed lengthwise, the Barristers occupying those nearest to the dais, and the Students taking the others indiscriminately. They are

laid so as to form messes for four, each mess being provided with distinct dishes, and making a party of itself. The persons who chance to be seated at the same mess need no other introduction; he who sits at the head is called "the Captain;" he first carves for himself, and then passes the dishes to the others in due order. The Society presents each mess with a bottle of wine—always port—a custom which might be most advantageously violated. Until lately, as the butler placed it upon the table, he named the Benchers who was appointed to do duty, and receive the acknowledgments of the recipients. "Master Cockburn, gentlemen," "Master Jervis, gentlemen," as the case might be. Hereupon the grateful Students rose and bowed to the representative of the bench, who bowed to them, and so he nodded and nodded, until all the messes in the hall had acknowledged the bounty of the Society. But this custom is now, alas! abolished. The wine decanted, the captain of the mess fills, and passes the decanter to the rest, and they take wine together, and are thenceforth acquaintances. When the Benchers have finished their repast, which is furnished with abundance of dainties, the steward repeats another formula, as a grace after meat, and the Benchers pass down the hall on the other side, in like procession as before, the rest of the company standing; and sometimes they are greeted with applause, and sometimes, but rarely, and never deservedly, with disapprobation, as the Students chance to be pleased or displeased with some recent proceeding.

But this uniformity of entertainment is varied once in every Term, on Grand Day, as it is called, and occasionally at Readers' feasts and calls to the Bench. These events are celebrated by an extra bottle of wine, and the addition of a capon to the fare. The tables are more crowded, and the company remains longer seated at them, and some hours elapse before the hall is restored to silence and darkness.

There are eight dinners in every year, at which you will espy a few wigs scattered among the crowd of gowns. These are *call-days*; that is to say, the days on which Students who have completed their term of probation, digested their thirty-six dinners, and listened to lectures, are called to the Bar. To entitle them to this dignity, they must be proposed in Parliament by a Benchers—Parliament being the ancient name by which the councils of the Bench are designated. On this important day the fledgling Barristers march into the hall, in procession with the Benchers, arrayed in their bran-new gowns and wigs, stand in awful rank before the dignitaries, take the oaths of allegiance and supremacy to the Sovereign, and having received the congratulations of their friends, retire to the tables and mess for the last time with the Students, still wearing their professional costume. On this occasion the new-made Barrister supplies the wine of the mess he chances to join; and it is usual for such as have a circle of friends in the Society (and few are the unhappy beings who have not succeeded in making an extensive social circle in this most social of com-

munities), to give a handsome entertainment, to which they are permitted to invite strangers, and there is no limit to the supply of viands and wines but the purse or the inclination of the Barrister.

Many are the merry meetings holden in this old hall. Pleasant are the memories it enshrines of friendships formed there, ardent and enduring. In the same spot, Term after Term, you will see gathered the same groups—friends all, with community of feeling produced by the single tie of belonging to the same mess; where men—differing in everything beside, opposed in politics and religion, and not concealing their opposition, yet feel for each other the sincerest regard—meet with joy, part with regret, argue without anger, joke without ill-nature, contest for victory without rivalry, applaud without envy, and without jealousy promote the advancement each one of the other. Such at least, is our own experience; such is the character given of this Society by its elders.

The Temple is a world within itself, having little connection with the great city world within which it lies,—a charmed circle, possessing privileges, powers and authorities of its own. Into its sacred precincts no policeman, tax-gatherer nor rate-collector dares to enter. It preserves its own peace by its own constables, who have little more to do than walk about in liveried leisure and call for their Christmas-boxes. The Queen's Taxes are graciously gathered by the Treasurers of the two Societies; from municipal taxes, the City tribute,

it proudly claims exemption, and although, with characteristic loyalty, it submits to have the police-rate imposed upon it, notwithstanding that it provides its own police, yet was this concession made in dignified obedience to an act of Parliament, and not in recognition of any vote of city or parish authority. "We do not want your police," said the Temple, "we have always maintained our own, both for day and night, and paid them from our own funds, without demanding a penny from the extra-Temple citizens. It is not quite fair to tax us now for their convenience; but from our love of good order and respect for the law, we will contribute our proportion to your police; only, be it remembered, we do not want them here, and we will not have them. We will pay for yours if we must, but we will keep our own." And so do the Temple beadles bloom still in pristine majesty of brown turned up with yellow, and preserve peace and property within their precincts, at least as effectively as their blue-coated rivals on the other side of the gates.

Antiquity, expelled from every other part of London, has taken refuge in the Temple, with an apparent resolve to end his days there. But there are alarming indications of late that the poor persecuted gentleman will not be suffered to be at peace, or to live out the full term of his life, even in this stronghold. Symptoms are showing themselves of an insane desire to turn him out. What, but for a battery against him, can be the meaning of the monstrous pile of brick lately

erected under the mocking title of "Paper-buildings?" Would they *were* of paper, for then there would be *some* chance of their sharing the fate of their elder brethren, and being burned by a candle thrust under a bed, *in error*. But such good fortune belongs not to all incommodious or unsightly edifices, so Master Antiquity must e'en prepare himself, if not for total ejection from the territory which he had been taught to believe exclusively his own, at least to be insulted every day of his life by the spectacle of modern taste, as displayed in that substantial and respectable range of stone, suddenly terminated by a flank of red brick—a *most Gothic* design, with a Mother Redcap crown, and which harmonises with nothing, neither with the building of which it forms part, nor with the opposite wing, nor with aught within the range of vision.

Who, then, may venture to hope for a permanent possession of the spirit of the old time even within the precincts of the Temple, with this melancholy memento of innovation staring him in the face, here, in the very heart of the domain supposed to be dedicated to antiquity? May aught be accounted safe from invasion? Is the Garden safe? Is the Church safe? Is the Hall safe? Are the Benchers themselves safe? Are our social dinners secure? *Is there nothing but what is not?* In the name of all that is *interesting*, let us preserve such relics of the old time as yet are spared to us, and, if they be banished from all the world beside, let us hallow them in the Temple!

But this by the way. We could not pass the new

building without expressing the sense of insulted taste which it rouses in us, as in all beholders. Let us now resume our subject.

We are not sure that entire lives are not passed in the Temple, but we are sure that they *might* be. Here a studious man may dream away his days in the possession of most of the comforts, and many of the luxuries, of a civilised region; here he may accommodate himself with a dwelling, more or less capacious, more or less pleasantly situate, literally a town house or a country house, according to his taste or means, the one with a prospect of black bricks and a damp court, the other with a charming out-look upon grass, and flowers, and trees, and river, and scarcely a wall visible to remind its tenant that he is in a city. He may dwell, poet-like, in an attic, or, student-like, in a second floor, or, fashionably, in a first floor, or, humbly, in an area. He may furnish these rooms after his fancy, with the costly luxury of a west-end mansion, or the sober furniture of true professional chambers; to wit, bookcase, well lined with portly volumes, three chairs, one, at least, of which is huge, high-backed, with leather worn and greasy; its companions, differing entirely in age and shape: a rickety sofa, a table strewn with papers, open and folded, and books lying confusedly; a closed cupboard, that, on near approach, telleth of provender within; two or three prints of celebrated Chancellors, or Judges, accordingly as the votary belongs to Equity or Common Law.

Here is the Templar's house and sanctuary, upon

which none dares intrude, save the privileged laundress and the saucy clerk; and both of these personages being necessary appendages to a settlement in the Temple, and usually constituting themselves the real rulers of the domain,—the masters of the master,—they will deserve a passing notice.

To the uninitiated, the idea of a *laundress* is that of a lady whose talents are exclusively dedicated to the useful art of purifying dirty linen, and who notifies her calling to the world by the inscription, more expressive than elegant, “Mangling done here.” But not such is the laundress of Templar contemplation. The abstract idea of that personage is to him the form of a very plain woman, descending into the vale of life, with very dirty face and hands, and apron to match, having considerable fluency of speech, a resolute tone, a forward manner, busy and bustling, who comes and goes when she pleases, and without any apparent object puts his room “tidy,” as *she* terms it, or throws it into confusion, according to *his* notions; lights the fire, lays the breakfast, removes it, brings his tea, leaving him to put it aside for himself; and as she bars his window, wishes him a good night, with a manner that indicates something like a motherly interest in his well-being, and for which, because it reminds him of his boyhood’s home, he blesses her in his heart, and forgives her besom and her chatter. But if he chances to be ill, her woman’s nature is forthwith displayed; no murmurings then: she is as kind, and tender, and watchful, as if he were her own son;



looks in half-a-dozen times a day to see if she can do anything for him; bakes his toast, and makes his tea, and moves about on tiptoe, and procures of her own thoughtfulness little delicacies, and advises him not to work so hard, and even hints how much better it would be for him if he were to marry and leave those solitary chambers, and ventures a comparison between the lot of her master and that of her goodman at home, much to the disadvantage of the former. Such, in the natural history of the Temple, is the *Laundress*

Nor is the *Clerk* less *sui generis*. He is either a very sharp lad or a very dull man. If yet in his teens, he is a little, impudent, precocious varlet, learned in all the "wise saws and modern instances" that chance to be popular at the time, ultra-Cockney in his talk, ill-taught, and yet knowing a great deal too much for his age. If he be a man advanced in years, he is as dull now as in his premature boyhood he was sharp—as slow to move as he had been quick, as heavy in eye and feature as once he was bright and knowing. He dresses formally, he walks formally, he talks formally; occasionally he ventures a joke, but it is always a professional one; and an anecdote, but it is of some eccentric Judge who had been the delight of the last generation of the briefless. Such is the fate of the town bred; precocious in youth, manhood, which brings to the countryman an intelligence strengthened and matured, and faculties fitted for thought and action, only dulls his senses, and, if it sobers, makes him stupid. The

eras of life in him seem to have changed places; in his premature boyhood he is "the little man;" in his manhood, the dull boy; nature is perverted, and no season with him is genial.

But, boy or man, he is usually a good servant. Provided he be permitted certain traditional privileges, and too severe a censorship be not exercised over his sayings and doings, he is a faithful and useful assistant. The Barrister's Clerk ranks himself as a grade above the Attorney's Clerk, and yet, such is the force of custom, he will perform menial offices to which the latter would not condescend. He is valet as well as clerk, and footman as well as valet. He cleans his master's boots, brushes his master's shoes, waits upon his master at dinner, and will carry a plate of oysters or a pot of stout as readily as a blue bag or a brief. But then he has the prospect, at least, of rising with his master, whose fortunes are his own. The success of his master brings with it golden times to him; he may anticipate an income which Barristers themselves might envy; to be Judge's clerk, if his master should climb to that dignity; nay, even a carriage and a country-house are not beyond the bounds of possibility. Such things have been, and they may be again.

Hence he has that strongest possible inducement for faithful and zealous service—a community of interest. They must struggle together, pine in obscurity together, or rise together into fortune and fame. In the whole circle of society, there is not a tie so close as this. But, to do them justice,

the race of Clerks are not moved alone by their manifest interest in their master's advancement; they have also a personal attachment, and many are the fine traits that might be told of services rendered and sacrifices made, of pure unselfish regard, which would do honour to any class. If dependents, their masters soon come to be dependent upon them; if they show themselves worthy of trust, they are not long in being trusted, and, thus thrown together by circumstances, the assistant becomes the humble friend.

Life in Chambers is, at the best, a dull, monotonous and unwholesome life, and therefore not to be protracted longer than necessity requires. Its very cheerlessness tempts to irregularities that are injurious alike to health of body and of mind. The tendency of solitude is to foster evil imaginations, and to induce a desire for excitement at any price. It is the law of our being, and must be observed, or the penalties of disobedience will be endured.

But although we are fully conscious of the dangers that beset the Student's life in Chambers, we cannot counsel him to fly from them, but only to resist them. It is a necessary evil, which he must encounter as the price of his Profession, scarcely to be learned by any other process. The advantages of Chambers for the purposes of study more than counterbalance the disadvantages to which we have alluded. To become a lawyer, a man must become a hermit; he must sacrifice the pleasures and advantages of society, and the wonted

enjoyments of youth, at the altar of his ambition; and nowhere can this sacrifice be so easily made as in Chambers, where the very solitude compels to labour, and there is nothing to distract the attention from the abstruse and difficult page that is opened to the eye. Let him be ever so devoted to his task, the Student who shares the pleasures of a family will be tempted to linger over the social meal, to join the social circle, or to mingle in the dance; he must mould his hours and habits to those of the persons about him. But in Chambers he is absolutely his own master—his time and his thoughts are his own; meals are despatched with speed, except the tea, which the Student loves to extend over a full hour, and which, if he is wise, he will devote to some light reading—poetry or fiction, the newspaper or the review—as a valuable interval of relaxation between the toils of the day and the labours of the night, for far into the night he will probably protract his vigils. Perhaps, in accordance with all who volunteer advice, we ought to warn the youth who toils for the rewards of our toilsome Profession that he should not read hard at night, or sit up late over his books; but, rather, early to bed, and then up before the sun, and dedicate the fresh and wholesome morning to the tasks which, destructive at midnight, become pleasant then. We candidly admit such advice to be excellent; we recognise its truth; we are conscious of its propriety; we have never disputed it, and yet have we not been able to follow it; and, inasmuch as in this treatise it is our aim to describe rather the

strictly practical than the theoretically true, we are bound to refrain from inculcating that which we very well know would not be observed by the reader, whatever the language of warning or exhortation addressed to him. The plain fact is—and why disguise it?—that in our artificial London life early hours are impracticable. It is impossible for any man who does not live a life of utter seclusion from the rest of the world to go to bed at ten o'clock; and yet, unless he does so, he cannot, without injury to health from insufficient sleep, rise with the sun at five. And if the Student should bring with him to London his country habits, close his books at ten, just as he is getting deep into his subject, jump into bed, and rise at five with purpose to resume them, what does he find? His room unswept, his fire unkindled, his boots uncleaned, the chilling gloom of a fog, and all the unpleasantnesses of daybreak, with nothing of its poetry or its beauty. But suppose his zeal for the maxim that is to make him “healthy, wealthy, and wise,” to overcome these disagreeables; let him dare the dirt of laying and lighting his own fire; a room is not comfortably warmed in a moment; he composes himself to his books, but his hands and feet are like icicles; he is in no condition to write, he is in no mood to think, and before the warming is complete, and perhaps just as he is getting again into the spirit of his task, an hour or two being spent in the process, there comes the laundress with merciless resolve to sweep and dust the room and lay the breakfast; compelling him to take refuge in his

bedroom, where he probably reflects that, if he had continued at his books overnight till one o'clock, he would have enjoyed three calm hours of continuous and profitable labour, whereas he has exchanged that for three morning hours, of which two at the least have been wasted in unavoidable discomforts. This, we are conscious, is very unphilosophical, but it is very *true*, and our excuse must be, that we are endeavouring to deal with men and things *as they are*, and not as we might wish that they were, or as they ought to be.

Then resign yourself patiently to circumstances you cannot control, and adapt your habits to your position, with as little disregard as possible to the laws of health. If you cannot "early to bed," abandon also the "early to rise." Take needful sleep; give the mind repose when it is asked, even at the cost of half an hour or so. A literal translation of a well-known line at the opening of the *Iliad* informs us that "it does not become a *counsellor* to sleep all the night." But you are not a counsellor yet, so sleep on now; time enough to trespass upon needful rest when clients command, and you barter your health for gold. Observe carefully still the rules for reading, for recreation, for exercise, which we have suggested in an earlier part of this essay, and beware only lest you permit yourself to lapse into either error, of too much indulgence in pleasure, or too much devotion to study. Health is the first object, for, without it, all other objects are worthless, and health can only be secured by the temperate exercise of all the faculties

of mind and body, each in its turn and in its place, none over-taxed and none neglected.

From the solitude of Chambers you will find a pleasant and profitable relief in regular attendance at the meetings of the two Forensic Societies, and it is one of the advantages of life in Chambers that it offers every inducement to a visit to Lyon's-inn Hall, instead of the temptation to absence which so strongly besets him who dwells in another part of town, and who must take a rapid after-dinner walk citywards if he would be present in good time. The excitement and the society will benefit your health and spirits, as much as the practice will cultivate your acquaintance with the law, and your capacities for speaking. It combines the uses of society with the advantages of study.

Moreover, it will be your duty and your interest to attend regularly one or more of the series of lectures lately established in the several Inns of Court. Certain of them you are bound by the regulations to attend; but do not limit yourself to the letter of the law, but selecting such of the courses as from time to time chance to be most in accordance with the branches of the law you are then particularly reading, make a point of being present at every lecture, and not only give to it attentive ear, but let it be a rule with you to take notes of the most striking points of the argument, not merely for better impressing it upon the memory, but for a purpose which we will presently explain.

And here we must guard ourselves against the

possibility of being misinterpreted on this matter of lectures. While we admit them to be useful to some extent, and that they have been very properly introduced into the course of legal education by the Benchers, we are far from sharing the exaggerated estimate of their value so generally received. We believe that a mistake is made in this, proceeding from the not uncommon fault of confusing things that differ greatly in fact, because they are called by the same name. Lectures are the only means of conveying knowledge to those who cannot read; they form the best process of teaching sciences that are to be illustrated by experiments; they are but an imperfect method of conveying a statement of facts, and they constitute the worst plan that could be devised for impressing logical processes and abstract truths. The cause is, that the slowest reader speaks faster than the quickest faculty of reason can follow him, if he argues closely; and if his argument be not close, it is of little worth. Hence, for all that relates to the *history* of Law, as its birth, the origin of its various forms, the broad principles on which it is based, the changes it has undergone, and such like, lectures are sufficiently well adapted; but, for its application as illustrated in the cases, and its minute ramifications in practice, dependent as are these upon refined distinctions which it requires reflection to perceive and appreciate, the lecture is obviously unfitted, because the mind of the listener has not time to follow the train of argument as fast as it falls, previously excogitated, from the reader's lips, but is looking



for that which is coming instead of pondering on that which is past.

It appears to us, therefore, that lectures are not the best method of teaching Law, and that the Student will fall into a dangerous mistake if he supposes that, by attending a few courses of lectures, he will make himself a lawyer, or anything like one. The best use of law lectures, if we might speak of our own experience, is rather to teach the hearer what there is to be learned by him, and, as it were, to map out in his mind the region to be explored by *his own* research, than to fill it up from the stores of the lecturer. He obtains thus a comprehensive view of the subject; he discerns its origin; he sees how its branches have stretched themselves on all sides; he traces its boundaries; he learns what are the authorities where further information is to be found; and the lecture, so employed, becomes a useful *aid* to *reading*; but never can it be a substitute for the *book*.

Thence the use of the notes which we have recommended the Student to take, and hence he will see the kind of notes he ought to take. They need not be of the lecturer's very words; it would be better *not* to take them in short-hand. He should set down the divisions of the subject, and all its subdivisions, in their order; the cases and authorities cited, and the lecturer's *definitions*. These will suffice for the lecture-room. But the same evening, if possible, or not later than the next day, while yet it is fresh in his memory, he should transcribe *in a book*, at full and in proper

shape, the outline he has taken. This done, at his more leisure he should refer to this book, begin at the beginning of the lecture, turn to all the authorities and cases cited, read them with care, until he understands their bearing upon the principle they were adduced to prove, and so he may erect, upon the foundation laid in the lecture-room, a goodly structure of law. For any other purpose than this, lectures on law appear to us to be very greatly over-esteemed by the advocates of legal education, and often substituted for reading by the Student, who is but too willing to accept his regular attendance at the lecture-room as an excuse for irregular reading in his Chambers.

Still they are important, because they are now a necessary portion of his education: they are capable of being turned to very profitable account if judiciously employed, and they are a feature of the Student's career which could not be passed in this place without notice.

Peculiar as in every thing beside is this Life in the Temple which we have been describing,—peculiar in its dwellings, in its social character, in its pursuits, in its external as well as in its internal aspect, in its Hall dinners, its strange old customs and formalities,—it is not less peculiar in its observance of the grand and solemn rites of religion. It has within its precincts a structure, dedicated to God, such as in all Europe there is not the like of in beauty. It has been handed down to the Benchers of the Temple as a splendid relic of the taste and munificence of the Knights of the Holy

Sepulchre, whose mansions they have inherited, and worthily the sacred trust has been discharged. No cost has been spared in its preservation and renovation, and here it stands now, fresh as in the days of its youth, the pride of our sober community. You enter, and at once your thoughts are carried back through centuries to the days when those graceful aisles echoed to the tramp of iron heels, and those slender arches trembled with the clank of arms, as the warrior-worshippers knelt before the emblems of their faith. And there they are, still lying upon that pavement, those marble knights, with their crossed legs and their forms, scarcely touched by time, looking up to heaven as fixedly as they have looked for centuries; and that fine old organ makes the solid pavement shake as with subterraneous thunder; and the services are chanted cathedral-like, and glorious anthems are sung gloriously, and through the painted windows the light falls holily and richly toned; and the altar is emblazoned after its ancient fashion; and the walls and the ceiling show many colours, that blend into a delicious unity of hue that fills the mind with a sense of satisfaction; and the Benchers and the Barristers take their allotted places, and the Students theirs, with that recognition of rank which prevails throughout the Profession of the Law, and other seats are reserved exclusively for ladies who are permitted to be present if they accompany a Barrister or have a Benchers' order, and in this magnificent Temple of the Templars is the worship of God conducted after the most impressive and most

solemn fashion of the English Church, and with an earnestness of devotion such as is not always seen in its churches. The spirit of the place sheds its influence upon the worshippers.

## XXIII.

### THE CALL.

HAVING in this manner kept the prescribed number of Terms, that is to say, having eaten at least three dinners in each of twelve Terms, and attended a prescribed number of lectures, and attained the ripe age of twenty-three, you are competent to be called. But, previously to your call, you may, if you please, offer yourself for an examination, for the purpose of obtaining, if you can, a certificate of merit and the advantage of having your name published to the world as one who has given proof of legal attainments. It is an honourable ambition, and if you are conscious of being qualified, by all means dare the trial; for, even if you do not attain the immediate object, the benefit of the preliminary studies, and of the examination itself, will not be trifling.

And before you determine "to be called," bethink you well of the propriety of such a course. It will

be a matter for your gravest deliberation whether it will not be more prudent to practise for a while as a Pleader, and the considerations that should determine your choice may thus be stated:—

The comparative advantages of practising as a Pleader for a few years previously to going to the Bar are these. If you are yet young, you attain to age and experience before you make your *public* appearance, and so avoid the public failures which youth and inexperience can scarcely hope to escape at first, and which are always damaging—often destructive. You will not suffer from the imputation of being “a boy,” which invariably attaches to a very youthful Barrister, and which, once affixed, is not removed until long after he has really ceased to be one;—so difficult is it to erase an impression and to prevent the recurrence of associations of ideas once established in the mind. As a Pleader, you are intrusted with business which would not be given to you as Counsel; first, because it is one thing to deal with a case in chambers, surrounded by a library and with unlimited time for search, and another thing to deal with it in the exigencies of a Court, where no help can be given to you from without; and, secondly, because as a Pleader you are permitted to take *half-fees*, and, consequently, would be preferred for a great deal of work for which the Attorney would not be inclined to pay the full fee. Then, business is much more speedily and easily obtained by a Pleader than by a Barrister; for nobody who deals fairly with his clients would intrust a brief of any importance to

the hands of one who is without experience, whatever may be his natural abilities. Lastly, as a Pleader, you will form connections, which, if you give satisfaction, will follow you to the Bar, so that the years spent in pleading are not, as some suppose, time lost, even for the purposes of success as an Advocate; but, when called, you will be pretty sure to occupy the same position in respect of amount of business, and in the confidence of your clients, as if you had been spending the same period in wearing out your wig and gown, and rusting your brains in idleness; to say nothing of the difference of your expenditure in the meanwhile, which you must take as a very serious item into your calculation, for, as a Pleader, you have no other necessary expense than your chambers and your maintenance; as a Barrister, you will be compelled to throw away an additional hundred pounds every year in your attendance on Circuit and at your Sessions.

On the other hand, there may be circumstances which will outweigh these considerations; as, for instance, if you have had previous experience in the practice of the law—as, if you have been for a long time holding a situation which has compelled you to make the law your study, as is the case in some of the public offices; or, if you have actually practised for a few years as an Attorney. If you are already of mature age, and only when late in life had turned your attention to the law, you cannot then afford to devote six or seven years to pleading, but must rely upon the confidence which, to some extent, is always and very properly placed

in the fact of age, and the sober judgment it usually brings with it. In these and such-like cases, it would be more wise to be called immediately that you are qualified. But, in the majority of instances, prudence would recommend to every Student under the age of thirty the propriety of practising as a Pleader for a few years, before he presents himself as a candidate for forensic honours.

If you adopt the prudent course, and betake yourself to pleading, we must here part company with you for a time, heartily wishing you the success your diligence has deserved.

If you determine to be called, your first care will be to procure yourself to be proposed by a Benchler at the Parliament ; (so the assembled body of dignitaries of the Inn is termed.) This done, your name is posted in the Hall in the list of Students proposed, in order that any person who has "to show any just cause or impediment" why you are unfit to be admitted to a society of gentlemen might declare it before it is too late. You then make application to the Treasurer, who, you will remember, has all this time been in possession, without interest paid upon it, of your 100*l.* deposited on your admission, as your security for your fees. In true lawyer-like fashion he presents you with an account, which, within about 8*l.* or so, balances your account against him. But even this balance comes opportunely, for you had probably looked upon the money as gone for ever, and it just suffices to defray the charges for your wig and gown, which you must order forthwith, to be worn for the first time on



the great occasion of your call. We paid 3*l.* 3*s.* for a gown, but competition has since reduced the price to some 50*s.* or so; the wig, however, remains at its original, time-out-of-mind price of five guineas, for goats' hair warranted, wrought by the experienced hands of Savage or Albin. True it is, that some wretched innovator, speculating upon possible poverty at the Bar, has invented a wig which he offers for three guineas. But what a wig! what a stiff, wiry, dirty-hued, shapeless thing! "Pray *you* avoid it."

But your choice will yet lie between goats' hair and powder; a wig of native white and a wig made white by the barber. A war is raging at this moment in all our courts between nature and art. As often happens, a silly notion has entered some weak heads that it imparts a sort of dignity to the brains to clothe them with a coat of flour; some prefer it, out of respect to antiquity, it being the fashion of the olden time, and a third party advocates starch, as being the universal practice of all Judges, Serjeants, and Silks, and therefore snacking of aristocracy. But, in making your choice, you must also take convenience into account. A goats'-hair wig requires no barber's delicate attentions; it packs into a small tin box which you can carry in your blue bag or in your portmanteau; it does not throw dust into your eyes nor spoil your coat. The powdered wig, on the contrary, is guilty of all these annoyances. It costs a small annuity in the dressing; it plasters your coat with grease and then bespatters it with flour; it must be borne about

in a box by itself, and makes a third package in your travels; and, lastly, and perhaps the most serious objection of all, by reason of the pomatum with which it is larded, it keeps the head hot, prevents evaporation, and rots the hair, not unfrequently producing headaches and flow of blood to the brain; the hair wigs, on the contrary, permit the freest access of air to the skull.

This knotty point resolved, the measure of your cranium taken, and your order given, nothing remains but to send out your invitations to such of your friends as you purpose to invite to your *Call Party*.

At last arrives the hour, in your estimation so important, and really so big with fate to you—for upon its results depend the fortunes of your life. As the clock strikes five you rush to the Hall, where your robe-maker and your wig-maker are in attendance to put upon you these insignia for the first time, and see that they fit. You have worn a white “*tie*,” of course; your sister, your wife, your betrothed—whatever female hand is most dear to you, has provided your first bands of the most delicate gauze, and which you are afterwards glad to exchange for a coarser material that will not *curl* in the hot air of a court. You are arrayed in the costume of your Profession; you feel yourself now “my learned friend;” you peep sidelong at the little looking-glass in the lobby to try to see how you look; you endeavour to appear *nonchalant* in the presence of the servants, who, however, very well understand the meaning of your awkward *ease*.

But they anticipate a fee, and so they do not laugh outright, but proffer little services that are not required; and the under-butler makes a point of informing you that the wine is come, and at the same time expects you to drop half a sovereign into his hand.

But now that single indescribable thump of the beadle's staff upon the floor announces the approach of the Benchers; and ranging yourselves in the order of your seniority, measured by the dates of your admission, and which order of seniority is often of vast importance, inasmuch as it determines the question of seniority in Court, and, consequently, which shall *lead*, you follow the train of Benchers into the Hall, usually on such occasions crowded more than is its wont. You pass in procession through the ranks of smiling friends and envying freshmen, up to the foot of the dais; the Benchers stand in formidable array upon the platform; the Treasurer reads to you individually, and you repeat after him, the oaths of abjuration and supremacy, and the oath of allegiance; the Benchers bow to you, and you return the bow, and you walk back to your mess a full-fledged Barrister—an esquire of right—with great privileges, but also with great duties.

Your special friends in the Hall are already gathered at the table which you have chosen; you dine in your robes for the first and the last time in that Hall; you supply the wine to your party. The dinner ended, you disrobe; the dessert and the wines you have previously ordered are, by the accommo-

dating waiters, placed upon the table. On this occasion you are permitted, by a courteous custom, to invite any friends you please, although not members, to join your wine party.

The rest of the evening may be readily imagined. Six or eight parties are scattered about the Hall; each one has its complimentary speeches and toasts, with all the honours, and thanks returned. The sentiments uttered at each are, it is true, precisely the same. The new-made Barrister is invariably "a gentleman whose talents and industry cannot fail to secure to him the highest honours of the Profession;" and the said new-made Barrister always declares that "it is the proudest moment of his life;" then every visitor is by some toast or other complimented, and called on for a reply; then songs are sung; first by one, afterwards by many. In the beginning, one man only speaks at a time; after a while, half-a-dozen are upon their legs at once. "The honours" for a while are given with steady fire; in an hour, they are irregular; in two hours, they mingle with songs and speeches, every part of the table conducting its own exclusive performances.

As a similar course of entertainment is proceeding at the same time at six or eight other tables in the same room, each acting independently of its neighbours, and speaking, singing, or cheering, without reference to what the others may chance to be doing at the moment, the scene may be imagined, but cannot be described; but when the latter acts of the comedy are being played, and

every group is a Babel, the chaos of the eight united Babels can neither be described nor imagined. It must be heard and seen to be comprehended. At eleven o'clock the room is cleared, and before midnight that grand old Hall is as silent and as dark as if its oaken rafters had never echoed the convivialities of your *Call Party*.

## XXIV.

### REFLECTION

IN compliance with immemorial custom, be temperately mirthful at your Call Party, and when it is concluded, retire to your chambers, and, throwing aside the excitements of the evening, forgetting the flattering speeches of your friends, and banishing the dreams of your own hopeful fancy, give the last hour of that memorable day to calm and serious reflection upon the new duties that have devolved upon you, the new responsibilities you have undertaken, the new privileges you have received, the new rights that have been given to you to maintain. It is no light task that you are now solemnly pledged to perform; it will demand all your faculties, moral, intellectual, and physical; the energies of your mind and body must be devoted to its performance. It is not an enterprise to be thoughtlessly begun or carelessly pursued. When you assumed the title of **ADVOCATE**, you took upon you the responsibilities

as well as the honours of the office, and you should enter upon your new and hazardous career with a full appreciation of its duties and its dignity. To review these will be a worthy conclusion of your Call Day.

You have taken no oaths save that of loyalty to your sovereign; you have made no pledges, you have signed no contract, you have bound yourself by no promise to observe any code of laws, you have subscribed no creed, you have been subjected to no examination; upon the faith of your *honour* as a gentleman you have been admitted into a society of gentlemen; in a manly confidence that you have not offered yourself for the office without being prepared to submit to its obligations, you have been invested by your sovereign with the privileges of an Advocate. But, although unsworn, you are bound by a stronger obligation than any oath that human art could frame in words; and although the rules are unwritten, they are more imperative upon you than any statute of the realm. Let it, then, be your first resolve to submit yourself cheerfully and without reserve to the regulations of the Society to which you have been admitted, unconditionally in form, but in reliance upon your honour; and to dedicate yourself, head and heart,—in conduct, in speech, and in writing,—to the maintenance of its integrity and to the advancement of its reputation.

It needs very little experience of society to discover that a man's true interest is always to give the first place in his regards to the interests of the

profession or society of which he is a member. The attempt to court popularity, by abusing his own class, ensures to a man the hatred of those whom he betrays and the contempt of those to whom he sacrifices them. "*Stand by your Order.*" The observance of this maxim always commands respect, even from those with whom you may have to conflict in doing so. They who take advantage of a man's abuse of his own class despise him while they use him, and spurn him when he has served their turn. Do you bear this in mind, and having become a member of the Society, "*stand by your Order,*" and let your chiefest care be to maintain *its* rights and *its* privileges, at any sacrifice of your own seeming interests, and whatever the temporary inconvenience to yourself. They who may be offended for the moment will respect you even in their anger, and when reflection returns they will acknowledge in you at least an opponent with whom it is no indignity to strive. In these times, when encroachments are continually being attempted upon *all* privileges, and when the Lawyers are more especially subjected to popular hostility, it becomes more than ever necessary that the members of every class among them should, each of them, not only boldly and resolutely *stand by his Order*, but that both branches of the Profession should unite to maintain the privileges and position that each now enjoys.

Bethink you next of the great privileges which have been this day conferred upon you,—the privilege of unlimited freedom of speech,—the privilege of bearding the noblest and proudest in the land in



the cause of the poorest and lowliest; a privilege against which there is no protection for the powerful; which a pauper may require you to exercise on his behalf, and which, once so required by him, a peer cannot command, a *millionaire* cannot buy. In virtue of the robes you wear, all men's characters and conduct are exposed to your unbridled criticism, and there is no appeal, no redress for them, if they are wronged by you. But this tremendous power is entrusted to you in the confidence that you will not abuse it; it is given to you, not for your own advantage, but for the advantage of your clients; the privileges are not *yours*, but *theirs*, and it is that *they* might have a full and fair hearing that *you* are admitted to irresponsible speech. This mighty power; so capable of abuse if misdirected, may be employed most advantageously, if wisely and generously wielded. It may be made the vindicator of truth and righteousness when it can find no voice elsewhere. The time has been that the press, corrupted or coerced, has refused to utter truths unpalatable to the powers that be, and the voice of reason and justice has been stifled by the tyranny of monarchs, of oligarchies, or of mobs. Such times may be again. Should they come, it will be your mission to give utterance to those truths which can find no other mouth-piece; to stand boldly upon your *privilege* as an Advocate, and defy and denounce the wrong, under what guise or pretence soever it may appear, and whether it assume the name of liberty or of loyalty, of democracy or of despotism. You alone can command a hearing—you only are

exempt from the vengeance of those whose deeds you denounce; you only are irresponsible, save to your GOD and to your conscience; and as your predecessors have more than once turned back the tide of tyranny, against which all other opposition had proved powerless, so may it become *your* lot, in some evil days which the unknown future may have in store for your country, to follow their example and oppose the privilege of your robe to the tyranny of the time, not the less tyranny, because decreed by a majority, than when wielded by one or by a few.

And bethink you also of the solemnity of the task you have undertaken. What vast interests are to be committed to your hands and made dependant upon your single skill and judgment, to be exercised often in an instant, with only your sagacity to determine your choice, and yet upon that choice depending the issues of life or death, prosperity or ruin. How serious the responsibility incurred even in the defence of a prisoner on a petty charge!—his liberty for months or years—his character for ever—the desolation of his home—the ruin of his children; still more, where life is at stake, and it is upon your tact, and skill, and competency to the task, that it depends whether a fellow-creature shall die or live. Second only to these in importance are the properties that will be confided to your care;—the fortunes of families; hereditary honours; legitimacy; the vindication of public or of private character; the protection of the weak against the strong; of the poor against the rich;

of the oppressed against the oppressor; the maintenance of *right*; the disappointment of wrong; all these will be of the duties that devolve upon you by virtue of your office as an Advocate.

Scarcely need you be reminded that such duties and responsibilities will demand on your part uncommon capacities; great self-control; much courage to resist as well as to dare; stern rectitude; a fine sense of honour; a lofty morality; a profound sentiment of religion; a large Christian charity; a generous ambition; a noble disinterestedness,—an ever present consciousness of responsibility to Heaven for the talents that have been given to you, and to your fellow-men for the right use of the privileges with which they have entrusted you. So many and such various qualifications are required for the Advocate, so high is the standard of his acquirements, so much of natural ability and so much of cultivation are essential to his success;—when that success is attained, he has so much to do, and so much to shun, so many are his duties, so frequent the occasions for the exercise of his virtues, so countless the forms in which his capacities are tried, that of his own strength he cannot hope to come with credit out of the ordeal. He must turn for assistance to Him who alone is a very present help in time of trouble, and bending before the throne of Heaven he will find confidence in his humility, and strength in his confession of weakness.

Be it, then, *your* care, on this the first evening of *your call* to an office at once so important, so

difficult, and so perilous, to kneel down there, in your solitary chamber, and offer up a fervent prayer to Heaven for strength from on high to enable you to comprehend the rights and duties you have undertaken ; for wisdom and virtue to maintain the one and discharge the other manfully and fitly, to the glory of God, and for the good of your fellow-creatures.

The influence of that solemn prayer will assuredly be upon you through all your after-life ; it will be present in the time of temptation and in the hour of trial ; it will strengthen you in your toils ; give you courage when you feel your heart failing you ; nerve you to the combat ; conduct you to victory and crown you with the honours to which it should be your worthy ambition to aim, as the earthly reward of your industry, your perseverance, your self-control, your experience and your virtue.

## XXV.

### CHOICE OF A CIRCUIT.

YOUR first care will be to choose your Circuit and your Quarter Sessions, and in this important duty you will need to employ much deliberation, to use the utmost caution, and to weigh well all the many considerations that should be taken into account in the formation of your judgment. And for this reason, that practically your decision is almost irrevocable. By a wholesome rule of the Profession, you are permitted to change but once; and even that change cannot be made, after three years, without the consent of all who may be your juniors on the Circuit or at the Sessions, to which you wish to remove. This conventional law is often made the subject of complaint by those who feel its restraint, but have not reflected upon the reasons for it. Like all the other rules that have been established for the governance of the Bar, it will be found, upon investigation, not to have been

capriciously framed, but to be the result of experience, and to have *the general good* for its object. It may appear unjust to forbid a man to quit a place where he has been unsuccessful for another where he may hope for better fortune; but how much more unjust it would be, if it were permitted to him to proceed at any time to any Circuit or Quarter Sessions where accident had made an opening, and by virtue of his *seniority* to oust from their places the juniors who had been for years working their way upwards at *that* Bar? If this were allowed, no man would ever be safe in his position, for at any moment some other man might come unexpectedly and step over him, by virtue of his standing or of a silk gown. So great, indeed, would be the confusion occasioned, that it would be impossible for the Bar to exist in harmony; the struggle would become a personal one; the most hateful passions would be kindled; instead of *emulation*, as now, there would be *competition* in its worst shape; and, as a necessary consequence, the entire code of rules must be abolished that now regulates the relative positions of senior and junior—a result which the most positive objector to the existing rules would not, we believe, be prepared to accept.

But you should endeavour, if you can, to make so prudent a choice at the first, that even the thought of change shall not be permitted to enter your mind. Be assured that the proverb of the rolling stone is as applicable to the Advocate as to every other calling. Choose with care, but, having chosen, abide by

your choice. Perseverance is the secret of success in all pursuits. If you are only *assured* that you *really* possess the *natural* qualifications (which are indispensable, and for which there is no substitute), take your path and proceed in it steadily, whatever the obstacles, the difficulties, or the doubts, confident that they will yield and disperse before a *resolute will*. Nothing but utter hopelessness of success where you are, or uncommon prospects of prosperity in another place, should induce you to entertain the thought of change; for not only is the contemplation of change in itself injurious to the mind, but the time you have already spent must be counted as time lost. In your new position you will have to work your way once again through the same process to the same position, and you will probably find, after all, that your new Circuit, if it wants some of the difficulties which you found in your former one, has others of its own, which at a distance you had not discovered, but which are apparent now that you are near. But then repentance will be too late, for there is no retreating. Even if you have changed for the worse, for evil or for good, by your choice you must abide.

Hence, then, the necessity for that caution in the first resolve in the selection of your Circuit and Quarter Sessions, which we are desirous of impressing upon you; and we will now endeavour to set before you some of the considerations that experience and observation have suggested to us as those which may assist you in forming your judgment.

First, as to the choice of a *Circuit*.

In resolving this, the foremost question that presents itself will be, in what Circuit you have connections, and then, whether you should permit the fact of having connections in it to influence your choice, and to what extent.

If the choice lies between two Circuits equally desirable in other respects, but in one of which you have, and in the other you have not, connections, there can be no doubt that your preference should be given to the latter.

But too much importance is often attached to this circumstance of *connections*. It is right you should understand their true value, that you may not be deceived in your reliance upon what others will do for you, instead of depending upon what you can do for yourself. *Connections* are useful, but their utility is usually much over-rated. In the first place, they are not always your best *friends*. The experience of almost every man at the Bar will tell you, that his surest supporters have *not* been among those, whether relatives or acquaintances, upon whom he had the greatest claim, but persons previously unknown to him. The reasons for this are manifold. Your relations and friends know too much of you. They have been accustomed to see you as a child, a boy, a youth, and they cannot easily bring themselves to think of you as a man, and to consult you and confide their affairs to you, as one more learned and skilful than themselves. Besides, there is often a lurking sense of jealousy, which prevents them from



helping to lift you over their own heads. These motives, apart or combined, are wont to operate so as materially to contract the sum of benefits expected from connections; and fortunate it is that so it is, or there would be no hope for merit that wants them.

When the Bar of any Circuit is surveyed by one acquainted with the histories of the various men who crowd the counsel table, there is nothing more curious than to note the manner in which the business is distributed. Among them will be men highly and powerfully connected,—the sons of the most influential Squires of the county, or of Members of Parliament, or of Attorneys with extensive practice, and to whom it might be supposed that a considerable portion of the business would go, if only from the mere influence of those connections. There are other men, without family, or rich relatives, or influence of any kind. Yet do we frequently see the former sitting almost briefless, the latter busily employed. The truth is that, *in the long run*, the business will go to the most competent men. Influence and connection may procure a few briefs at first, or even permanently a certain number of trifling prosecutions and matters of small moment, which may be given to anybody. But an Attorney cannot confide a case of importance to one of whose efficiency he is not assured, even if he be his son or his brother. He dares not sacrifice his client to *any* interest or partiality, and it is this confidence shown in cases of importance, and not the bestowing of a few prosecution briefs, that tests

the real position which the Advocate holds in the estimation of the Attorneys.

Therefore it is that connections *can* do no more for you than give you a trial, nor have you a right to expect from them more than this. But that is in itself a considerable advantage; for, merely because you have not the opportunity to display your powers, you may possibly, as *a few* of your predecessors have done, remain for a long time unknown. To that extent connections are a benefit, to be taken into account in your calculation of the Circuit to be preferred. But even that possibility is more remote than it is generally supposed to be. As “mute inglorious Miltons” are rather ideal than real, so extraordinary ability at the Bar, pining in obscurity for many years, for want only of the opportunity to show itself, is a fancy more useful to soothe the disappointed, who have *mistaken themselves*, than true in fact. We have no faith in neglected genius. It is one of the characteristics of genius through all obstacles to make itself known,—and that, not from vanity, but from the impulse to *action*, which is *its nature*. If it does not thus go forth of him we know that it is not *real genius*, but a vague sort of cleverness, which is so often mistaken for it, or that still more frequent ambition which mistakes its desire of greatness for capacity to be great. It is almost certain that, in the course of three or four years regular attendance at the Assizes and Quarter Sessions, *some* occasion will arise,—through *kites* descending from the Court, or briefs held for friends

in their absence, or accidental stragglers,—*some* chances will occur, by which you will be enabled to prove that there is in you the *capacity* for business, if you had it. The reason why this is so rarely acknowledged is, that so few men are ready to seize the opportunity when it offers, and if not fearlessly accepted at the moment, it passes by, and the chance is lost. You have only to be *always ready*, and you may depend upon it that the chance will come, and much more speedily than you are wont to believe. Such, at least, is the result of our own experience and of the information we have gathered from others.

Connections, then, are not the only consideration in the choice of a Circuit ; they are but one element in the calculation, and that not a very important one. There are others of greater seriousness, which it behoves you to consider.

You must take some account of the position of the Bar already assembled there. As to numbers, that is now a matter which it is vain to set down as an item, for such has been of late the vast increase of Barristers that every Circuit is overcrowded, and the wigs have increased precisely in proportion as the business has decreased. The circumstances to be considered are, the capacities of the men, present and prospective, who form its actual staff of Advocates. Are the leaders likely to be fixtures, or to move off? How many rising juniors are there, and are they of the class of Advocates who are likely to seize and to maintain the vacant post on the departure of the present

leaders? You must remember that, whatever your abilities, you must move upward by *seniority*: all you can hope to effect is to be ready to take the place when your turn comes, or to contest it successfully with another of equal standing. You *must* bide your time. If, therefore, you find that there are already a succession of well-qualified juniors, who will precede you by virtue of their seniority, unless you can pass them by force of *decided* superiority of genius, you should avoid that Circuit, even though you have connections within it, and betake yourself to some other where the road to success is less hopelessly blocked.

Another consideration is, the size of the Circuit, and the amount of business to which it leads. It is of little use to obtain distinction where it produces nothing after it is won. A small Circuit should not be chosen by you, if you are confident in your own capacities, and have the perseverance, the courage, and the pecuniary means, to wait your turn. There can be no doubt that a man who knows himself to be qualified by nature and education to be a great Advocate should make choice of a Circuit which will offer the largest and most advantageous field for his exertions when he shall have achieved greatness.

## XXVI.

### THE CIRCUIT.

YOUR Circuit chosen, you have next to determine what of its Assizes you will attend; and as opinion and practice differ much upon this point, we will briefly state the arguments on both sides, that you may form your own judgment.

Some say, "attend all;" others, "select such as afford a present prospect of business."

You cannot know where or when business will come, argue the first; accident may bring you forward at any time or anywhere; chance may throw a brief into your hands in the unlikeliest places; you make acquaintances by degrees, and establish yourself in the memories of the people of the locality; your face, at least, becomes familiar; your name ceases to be strange; you are, in their contemplation, a part of the Circuit; in time they come to know you, and, when a man is wanted,

you will be preferred to a new comer. These considerations are certainly weighty.

On the other hand, it is urged that it is a needless waste of time and money to wander through *the whole* Circuit. The constitution of the Bar prevents a junior from obtaining much practice out of his Sessions county. These are the reasons. A junior can expect only junior business; that is to say, in the Nisi Prius Court, the *third* brief in the few causes that admit of *three* counsel on one side, and, in the Criminal Court, prosecutions and petty defences. However desirous of serving you, an Attorney *cannot*, in justice to his client, intrust you for four or five years with anything more important; for, whatever your ability or learning, you have not *experience*, which is an indispensable qualification. Your own brother would be compelled, in any cause he was taking to trial, to give his first brief to an Advocate as leader, his second brief to one of the experienced "heavy juniors,"—some pleader and case lawyer. The *third* brief only is really at his own disposal, and not one cause in ten permits the addition of a third counsel. Your chances, therefore, in a county where you have no connections to assist you to these two or three stray *third* briefs, is infinitely small. It is little better in the Criminal Court of a county in which you have not a multitude of friends, or that is not your Sessions county. An Attorney cannot, with any courtesy or fairness, take away his criminal briefs from the man who labours for him at Sessions, to give them to a

stranger at the Assizes. Your best friend could not do this, however desirous to serve you. Hence, at the Assizes, the criminal business is always, and very properly, given to the Sessions men—we mean, of course, the mass of the business, all that is worth having and worth coming for. Small prosecutions are certainly open to the many; but then these are given to personal friends, if not to the Sessions man, and you, as a friendless junior, have not the most remote chance of obtaining them; or, if one or two should, by some fortunate chance, come to you, they afford no opportunity for an effort, and are of no worth to you beyond the guinea that accompanies them, and that is but a poor set-off against your expenses.

As a junior therefore, of less than five or six years' standing, it is almost impossible that you should obtain any business in a strange county, where you have not connections, and, even where you can count a few friends, it is not in their power to assist you to anything worth the cost of the journey. But there is another consideration which should have your serious attention. Is there not also some positive mischief resulting from being seen frequently at a place, without business? We think there is; and that this has not been sufficiently taken into account in the decision of the question at issue. True it is that you make your *face* familiar, and you come to be contemplated as a part of the Circuit. But after what fashion? We will tell you.

To every Circuit there belongs a band of gentle-

men who were never known to hold a brief, to whom nobody ever dreamed of offering a brief, and who, if it had been offered, would probably have declined it. Yet they travel the entire Circuit, are punctual in bowing to the Judge at the opening of the court in the morning, sit there with heroic patience all the day through, nor leave until his lordship announces that he will "take no other case after *that*," when they look delighted, rise like schoolboys released, and rush from the Court to enjoy half an hour's holiday before dinner. This they have done for more years than any but themselves and their fellows can remember. They are the traditions of the Circuit. To all the inhabitants of all the Assize Towns they are as familiar by name and aspect as the captain of the javelin-men; they are *the* Circuit, in the embodied idea of that abstract term. They are not inaptly compared to the dummies on a book-shelf;—they help to fill the table; to make an imposing mass of wigs; to swell the importance of the Bar; and therefore they have their uses. There is nothing useless in nature—not even a briefless Barrister.

Now it is necessary that you should bethink you soberly whether, by going many times to a place where you have no briefs, you may not incur the hazard of being classed, in the contemplation of the spectators, with those circuit dummies. Who knows that you have business *elsewhere*—if so it be? Enough that, year after year, you are seen to be idle *here*, to affix to you the reputation of being



but an amateur lawyer. You know the proverbial consequence of a bad name.

But if you begin by going only to your Sessions county, and establishing first a reputation where, if you have any capacity, you are almost sure to obtain some business soon, and your full share of it ultimately, and then gradually extend your travel as your reputation extends, you will go to the new county, not as a nameless stranger, who may or may not be somebody, but as one who is already known, with a *prestige* in your favour, and a confidence in your fitness which cannot be given to any man who is yet untried. If there be briefs to be given out of the Sessions circle, they are more likely to light upon you, a man with a name, than upon one whose face may be familiar from being frequently seen in solemn idleness at the counsel-table, and remembered as a part of the pageantry of an Assize, but of whose qualifications there is the profoundest ignorance. Be assured that you, the new comer, with five years' experience to back you, will be in a better position by far than if you had been sitting in state in those Courts during the same period, and you will take sure precedence of your predecessors, besides saving the four or five hundred pounds which they have spent in the vain chase of a junior after Circuit business out of his own Sessions county.

Of course, if, in any county, you have connections who are likely to exert themselves in your behalf, you will *at once* attend there also; but if, after a fair trial, you find that they cannot, or will not,

help you to something more than the single complimentary prosecution brief, with its guinea fee, do not continue to be seen there without business, but confine yourself again to your Sessions county, and pursue the process of *development* described above.

Such are the arguments on both sides of this vexed question; and although great authorities differ from our conclusion, we have no hesitation in giving a preference to the plan of beginning in one county, and penetrating into others by degrees, over that of wandering through the whole Circuit for years, with no reasonable probability of appearing otherwise than as a dummy. You will, however, weigh the reasons for either course, and adopt that which may then appear to you the most satisfactory.

But, observe, that wherever you resolve to go you must go *regularly*. Nothing should be permitted to interfere with the indispensable duty of being present at *all* Sessions and Assizes to which you have determined to attach yourself. You must so identify yourself with them as to be considered a part of them,—that they shall not look like themselves, wanting you. Nothing so much gives the aspect of a man of business as being always at his post, ever ready to take business when it offers—ever prepared to take care of it when he has got it. If regularity of attendance be not always a test of the existence either of the taste, or the capability, for business, irregularity is a certain sign of its absence, and is more damaging to the reputation of a young Advocate than positive defects in manner or know-

ledge. The first thing a client requires is reliance upon you that you can be found when wanted, and that, being once intrusted with his brief, it will have your attention, without imposing upon him the trouble of watching it and you. Therefore, not only come, at any inconvenience, to the Court you have once resolved to attend, but be punctually in your place day by day at the moment of its opening. We are desirous of impressing this upon you the more earnestly, because we have seen the mischiefs that result from its neglect. The Circuit offers large temptations to the indulgence of late hours at night. The hospitable people in the country towns make the Assizes and the Sessions the periods for their *réunions*, to which the presence of strangers imparts a zest, and the Bar are always cordially welcomed—invitations crowd upon us, the company is agreeable, and it requires some self-command to quit the ball-room just when the spirit of the dance is becoming the most cheerful. But late hours at night always tempt, and after awhile compel, late hours in the morning. You cannot be regularly in court at nine o'clock, if you regularly dance until three. Occasionally you may set sleep at defiance, for a single night; but two or three nights of abbreviated slumber will certainly show themselves in the heavy eye, in the dulled brain; and if you do not positively lie a-bed after the hour of business has begun, of which there is great probability, you go to the court unstrung and incompetent to that intense exercise of the mind which is demanded of the Advocate in the discharge of his duties.

It is, we hope and believe, scarcely necessary now to counsel temperance. The times are traditional in which there was emulation at the inestable. But a hint upon another topic will not be so needless. Do not neglect to take daily exercise. The hot carbonized air of the crowded and often ill-ventilated courts in the country is extremely noxious, as you will soon discover in a series of disagreeable sensations,—sleepiness, inactivity of mind, relaxation of the whole bodily frame, and the other usual results of depression of the nervous system, for want of a proper supply of stimulus to the vital powers,—in short, from a lack of oxygen. To counteract this evil influence which, if you have any tendency to disease will be sure to call it into activity, by the favourable condition of your body for its development, it is essential that you should take regular exercise in the open air, and especially after leaving court, and before you retire to your bed. Let it be a rule with you, that, however late the hour to which you may be detained in the court, whatever your engagements in the evening, whatever the weather, you shall not go to bed until you have walked *briskly* in the open air for half an hour at the least. Even if you must steal exercise from sleep, time will be better expended so than in the unwholesome slumber of over-carbonized blood. And, when your time of retiring to rest will admit of your rising sufficiently early, it would be desirable to walk a mile or two *before* the court opens, for the refreshment alike of the mind and body. But let the *evening* walk be

deemed indispensable; and we have dwelt upon it thus earnestly, because its importance does not appear to be generally known, and because the temptations to omit it are so many and potent, that unless there be a profound conviction of its necessity for preserving the sound mind in the sound body, it is very likely to be forgotten.

Every Circuit has its own rules for the regulation of its own Bar, but these are, of course, subordinate to the general regulations which govern the whole Bar.

It is right that you should acquaint yourself with both, that you may observe them to the best of your ability. They are not arbitrary rules, wantonly devised and tyrannically imposed, but such as experience has proved to conduce to the common convenience, and to the maintenance of harmony among a numerous body of men met together in pursuit of the same object, and, therefore, necessarily rivals. The result has proved the wisdom with which those rules were framed; for the generally harmonious state of the Circuit Bars will appear marvellous, when we remember the rivalry that prevails among the members of every other profession, and the consequent quarrels and hostilities, even although they may be rarely brought into personal contact. But when we reflect that the Bar is an arena of personal competition; that each man can only succeed by triumphing over his fellows; that fortune and fame are dependant upon the issue of the contest; that there is continual opportunity, and not unfrequently necessity, to say severe things one of

another, and to assume at least the appearance of a quarrel, in court; we say, when all this is duly considered, it is a proof of the marvellous wisdom with which the regulations of the Bar have been framed, that we see how entirely they have succeeded in preserving, not civility alone, but good feeling and friendship, between the individuals so situated, and how they have made the Circuit Bars models of gentlemanly intercourse.

We direct your attention to these results, because it is not uncommon for those who have had no experience of their practical working to try these regulations of the Bar by some standard of fitness taken from circumstances altogether different, and to condemn this one as worthless, and that one as foolish, and to chafe under the restraints, without calculating the *per contra* of convenience, which, if they do not feel immediately, they will certainly discover the moment they are fairly launched into the business of the Circuit. Some of them, undoubtedly, have been superseded by changed external circumstances, but these, although not formally repealed, are practically so by tacit assent.

A brief review of these rules will, perhaps, be acceptable; but it should be premised that, as each Circuit has its own special regulations, we are unable to do more than state the general rules that govern the whole Bar, and the special ones which prevail on the Circuit with which we are personally acquainted; but these will suffice to show their general character.

The general rules are,—first, that you shall not

change your Circuit more than once, nor at all after three years, at least without the consent of all your juniors on the Circuit you propose to join.

Although this may appear to be a harsh restriction on liberty, its justice and propriety will be recognised, when the reasons for it are stated.

Were it not for this regulation, no man could be secure of his position. The moment that a man having business should retire from any Circuit, there would be a general scramble for the vacant place,—men would rush in from all quarters, and you, who had been labouring and patiently waiting your turn through long years, would find yourself, as it were, thrust out of your inheritance by a stranger, and by one, moreover, who beats you, not by superior ability, but by virtue of longer standing: he was *called*, perhaps, a Term or so before you, and, consequently, takes precedence of you. It may be well imagined what discords and strifes would ensue; how entirely all the existing brotherhood of the Circuit Bar would be broken up, and the competition of opposition tradesmen take the place of the honourable and generous rivalry that now merely stimulates the energy of the mind, without provoking personal hatreds.

But the present regulation completely prevents this mischief, and secures fair play for all. If you have steadily worked your way upwards, so as to be prepared to take the place of a departing senior, you know that you cannot be deprived of the reward of your patience, industry, and ability, by the irruption of a stranger, against whom you have never

measured your strength, and who puts you down by reason of his *seniority*; if you are disappointed, it can only be by a man of your own standing, on your own Circuit, with whom you have wrestled in a fair and open trial of intellectual strength, with equal chances, and who has won because he was entitled to do so—because he has proved himself to be your superior in capacity. It is, indeed, always sufficiently painful to be worsted in any conflict, to see a rival in anything passing you in the race; but with the mortification of defeat there is not mingled the sense of injustice and of wrong, which, in the other case, would add bitterness to regret; nor is your whole life made anxious and uncomfortable by the consciousness of insecurity which would haunt you if, instead of rivals whom you know and see about you, crowds of them might come from afar to snatch out of your hand the honours and rewards for which you have toiled and waited.

We have dwelt thus minutely upon the reasons for this regulation, because there prevails among many juniors an impression that it is unjust; that it was made and is maintained by the seniors for their own convenience, without regard to the position of others. “It is,” they say, “very hard that we, who have tried this Circuit in vain, and find all prospect of business hopeless, should not be permitted to betake ourselves to another where better chances of success open to us. Circumstances have changed since we joined this Circuit: our friends have left the neighbourhood; we have made



connections in another Circuit; in that we might prosper; here we are condemned to a life of hopeless idleness."

This is very true, and it is to some extent an evil; but here, as in other cases, the evils on both sides must be weighed. Is it not better that a few should be inconvenienced thus, than that *all* should be subjected to insecurity and deprived of the stimulus to exertion which a reasonable assurance of reward produces. Is it not better thus than that the harmony of the whole Bar should be destroyed, and a Profession, now conducted with the generous rivalry of gentlemen, converted into a personal strife, in which the vulgarest brawlers would obtain the victory, because honourable men could not compete with them in acts which *they* would have no shame to practise? Besides, to you also the regulation is an advantage; for you hope to rise in your Circuit; you look forward at least to a time when you shall claim a place among the recipients of its honours and rewards, and you should be unwilling to hazard these, because your prospects might possibly change in the meanwhile, and it *might* happen that you have cause to regret your choice, and find it advantageous to migrate.

And there is another benefit not usually urged, but which seems to us to be of material importance in estimating the value of this regulation of the Bar. It is the advantage to the individual that results from a consciousness that his choice is final; that he *cannot* change; that *here* he must succeed or fail. It prevents that restlessness of mind which

too often seriously affects men who feel themselves unsettled, and look out for something better. If the young Barrister could change about as often as he pleased, he would be continually watching the state of other Circuits, instead of fixing his whole attention upon his own; he would neglect opportunities at home, in his search after them elsewhere. A habit of wandering is readily acquired; there is a natural tendency in the mind to believe that it would be better off in some other position than that in which it is. But in no profession did any man ever yet succeed by going about looking for success. We do not mean by this that he should sit at home, with folded arms, waiting for it to come to him; that would be to fall into the opposite error; for, now-a-days at least, however it may have been formerly, there is not such a lack of able men, in any profession, that the world should need to go to seek them, and, as it were, press them into its service; besides, the world, which is a very shrewd world, is not unlikely to conclude that a man who does nothing to prove his capacity is wanting either in the capacity itself or in the industry or courage requisite to make it practically useful. All that we mean is, that you should not give yourself to a habit of discontentedness, and paralyze exertion within the circle in which you have deliberately cast your lot, by looking out of it into other circles, and imagining how much better off you would be if you were there instead of here, and devising the means of change, and so neglecting the opportunities that actually occur to you, because the mind is

wandering to a distance where, as you would discover, if you were to transfer yourself, 'tis "*fancy* lends enchantment to the view."

The rule, therefore, that forbids change of Circuit after a certain period, and within that period permits of it once only, is not merely a rule that conduces to the general convenience of the whole Bar, but it is a positive advantage to its members individually, by preventing the restlessness which would certainly prevail if they were allowed to move from Circuit to Circuit, at any time, and as often as convenience, or opportunity, or whim, might dictate.

As it is right that you should observe the minutest rules of etiquette upon your Circuit, it will be advisable that, before its commencement, you should call upon its Leader, at his chambers in town, and notify your intention, and ask him what are the general rules to be observed (each Circuit having its own code). You will be sure of a courteous and even kind reception, and the information you seek will be readily given. After this, the Leader will probably take upon himself the task of introducing you to your future fellows at the mess-table, and such an introduction has its advantages, for it is a tacit recommendation of you to their good graces. It would be still better if you could be introduced to your Leader by some mutual friend, who will avouch you to him, for in such case he will, upon that assurance, avouch you as a gentleman, and establish a position for you at once.

When you have joined, accede cheerfully to all the Circuit arrangements,—the fines, the fees, the subscriptions to the wine fund, to the baggage van, to the travelling regulations; for, however inconvenient the expense or trouble they occasion to you, they are wholesome regulations, promoting the general welfare and adding materially to the comfort of your Circuit life. Remember that the Profession has been your voluntary choice; that you knew, or ought to have known, before you determined to join it, what were the charges it would impose upon you. When you were admitted a member of the Inns of Court—and again, more solemnly, when you were called to the Bar,—it was upon the tacit understanding, as binding upon a gentleman as any form of oath, that you subscribed to its rules and would observe them. If you doubt this, try it thus. Would you have been received as a member of your Inn, in the first place; would the Benchers have consented to call you, if you had *avowed* that it was your intention not to submit to what may be termed the *bye-laws of the Bar*? Certainly not. Then is not the obligation upon you to observe the *implied* terms of your admission as binding as, or even more so than, if they had been expressed? Your own conscience will answer; and, if conscience will not, *honour* will.

Railways have introduced as formidable innovations upon the customs of the Bar as in all other social habits and arrangements. Formerly it was an established rule that a Barrister should not travel his Circuit by a public conveyance. This

might have proceeded from the jealousy, which marks all the rules of the Bar, of unfair advantage taken by means of peculiar opportunities for making acquaintance with Attorneys, or from a fear lest thus they should obtain a knowledge of matters in course of litigation which it was desirable they should approach with unprejudiced minds; or from possible inconveniences that might result among themselves from competition for places in the coach. But this rule, which was very stringently enforced, and to which the only permitted exception was in case of inability to procure a companion to share a conveyance with him (it not being required of a man to pay for a chaise for himself alone), has been practically abolished by the introduction of railways. The Bar does not ignore the existence of boundless accommodation, nor refuse to acknowledge the superiority of an express train over a post-chaise. Principle, if ever there was any in the rule itself, has been sacrificed to comfort, economy, and speed. A railway carriage offers precisely the same opportunities on account of which the stage-coach was excommunicated; but, nevertheless, the claims of the railway to carry the learning of the Circuit are admitted, and the rule is practically rescinded; for, after so great a breach in it, to defend the remnant and say that it shall still be good for the prohibition of a mail-coach, would be an absurdity which no Bar could have the face to maintain.

But although, as we take it, the rule that prohibits Circuit travel by a public conveyance is

practically repealed by reason of the railways, yet will it usually be found more convenient and equally economical to journey, where there is no railway, by means of the old method—a party joining in the hire of a carriage; transmitting baggage by the van which, on most of the Circuits, is maintained by subscription for that purpose. In such journeys, the orderly spirit to which the Bar is indebted for its sociability still prevails, and established rules prescribe the arrangements. The junior of the party—(junior in *standing*, the only kind of *age* recognised by the Bar)—undertakes the office of director and paymaster; he apportions the expenses equally between them, and is *required* to ask of each one his portion on the following day—a wise regulation, which removes the objection that might otherwise be felt to asking that which, in the cares of business, might otherwise escape the memory, to the unfair burdening with cost of him on whom falls the duty of providing.

Another rule is, that you shall not enter the Assize town until the Commission day. Formerly, we believe, this was carried so far, that it was not permitted to Counsel to enter it before the Judges. It is not, however, now so stringently observed. The reason for this wholesome regulation is that which will be found to govern the greater part of the social code of the Bar—the avoidance of undue advantages being taken one of another, and the consequent dissensions that would arise, to the destruction of the general peace, harmony, and comfort. If it were permitted to go to the Assize

town before the Commission day, some might be tempted to quit the last place, where they are unemployed, and by means of acquaintanceship and the convenience of being near to be consulted, anticipate the briefs of those who were detained by business elsewhere. By the rule now under notice some security is afforded that all shall "*start fair.*"

But this rule is subject to some exceptions. You may precede the Judge to the Assize town, if called thither by actual business—as by a Sessions, or an arbitration, or such like; and if it be your home, or your usual abiding-place, you may adjourn there during the *interval of a whole assize*; and this, perhaps, is a good line to draw: you shall not go to an Assizes, stay there a day or two, and then move on to the Assize town, merely because you have a home or friends there, but you may go thither to spend the period of an intermediate Assize which you have not attended at all.

Again, at the Assizes you are forbidden to live at an hotel; you must take lodgings or reside at a private house. Probably the same reason dictated this rule as that which prohibits travelling in a public conveyance. But the principle of *cessante ratione, &c.*, does not apply to this as to the other regulation, for here the reason has *not* ceased; if ever a sound one, it is equally operative at this time.

But it is otherwise at Quarter Sessions, and there convenience determines the practice. When that business was more abundant than now it is, lodgings were more convenient than any other

residence; but now that the business is reduced, so that it scarcely repays the cost of the journey, and two days suffice to despatch it, the Bar will probably adopt the practice usual at local Sessions, and take up their quarters at an hotel, having a common sitting-room and one room for consultation with their clients; an agreeable as well as an economical arrangement, which we would recommend to universal adoption.

One of the most difficult and delicate cares of a Barrister is to regulate his conduct towards the Attorneys, and probably there is nothing in his professional life which occasions him so many perplexities and annoyances as this; and all because there exist no definite regulations upon the matter; traditions, opinions and practice varying, not only on every Circuit, but between the different *authorities* in the same Circuit, each one setting up a standard of his own, according to his particular notions, and trying the conduct of others by *his* measure, in default of some definite test. Perhaps it will not be deemed impertinent in this place, or presumptuous, if we, who have had personal experience of the feelings and opinions of *both* branches of the Profession on this subject, *endeavour* to catch the ideas that float about the forensic mind upon the matter, and after subjecting them to the review of common sense, attempt to put them into a distinct, intelligible, and rational shape, as adapted to the circumstances of the times in which we live, and as best calculated to promote the respectability, and, consequently, the true advantage, of *the whole*



Profession, each branch of which has a direct interest in preserving and raising the *status* of the other, since thus only can they exalt *the Profession* as a whole. We shall enter upon this task with a consciousness of its delicacy and difficulty, and shall state our views with due deference to others better entitled to treat such a topic; but it properly belongs to the larger subject of this treatise; its importance is as great as its difficulty, and if we can in any degree relieve the young Advocate from even a portion of his present perplexities, by giving some definite rules of conduct, instead of the uncertain ones he now *hears*, and which he *sees* hourly violated even by the very persons who proclaim them, we shall have the satisfaction of feeling that the labour has not been worthless.

It will be necessary, in the first place, to bear in mind the *object* of these regulations of professional intercourse. They are supposed by some to proceed from a purpose thus to indicate degrees of *rank*, and to preserve the relative positions of superior and inferior between the two branches of the Profession. But such was *not* the origin of the regulations, nor are they maintained with any such views. They have been framed with the single object which we have already noticed as being the primary one sought in all the social polity of the Bar—the prevention of undue advantage by one member of it over the other, by means of other influences than the legitimate one of superior merit. Therefore, it is not as a slight to the Attorneys, or to indicate inferiority, or to keep them at humble

distance, that the rules of Circuit intercourse between the two branches of the Profession were framed, but solely to prevent irregular methods of procuring briefs, which would often be as inconvenient to the Attorneys themselves as to the character and internal harmony of the Bar; for it is most desirable that the widest and most unbiassed choice of his Advocate should be exercised by the Attorney, and it is a duty to his client that he *shall* so choose,—a duty which he might be tempted to overlook, if he were to be exposed to unrestrained solicitations, or claims difficult to resist. Hence the necessity for some regulations, and that is their *sole* object.

But, as remarked before, these regulations are not uniform on all the Circuits, nor do the *authorities* anywhere agree as to their limits. It is, therefore, difficult to define them, and we can only hope to do so by thus recalling their principles and purpose.

The first *principle* may, perhaps, be thus stated. The regulations are strictly professional, and relate only to *professional intercourse*,—and no rule can be valid which pretends to reach beyond this,—or to determine the *social* intercourse of the Barrister and the Attorney, as individuals. It is only *while playing the part of counsel* that custom could prescribe any rules of conduct towards Attorneys. The moment the professional character is put off, the law ceases to be imperative.

But when is the professional character put on and put off? Is it with the professional costume,

or are we supposed to be always "in character" while on Circuit? By solving this question most of the existing differences of opinion and of practice might be determined. For instance, on some Circuits it is forbidden to shake hands with an Attorney at any time or any where upon Circuit. In others, this prohibition is confined to the court and its precincts.

Applying the above test, it would appear that the latter is the correct, as certainly it is the reasonable, rule. It is manifestly right that an Attorney with briefs under his arm should not be affectionately greeted, as he passes up behind the counsel-table, by all his wigged acquaintances. But to say that a Barrister meeting his relation or his friend in the street shall not shake hands with him, is an irrational law, which has no foundation in necessity, which cannot appeal to propriety, and which is unsuited to the present state of society generally, and of the Profession in particular. It does not exist on the Circuit with which we are most familiar, and there is no complaint of inconvenient consequences, and the sooner the more stringent rule is relaxed in the Circuits where it still lingers, the better for the Profession. In order to maintain useful and rational laws in their efficiency, it is necessary to amend whatever is useless, irrational, or unsuited to the circumstances of the times. In such matters the most resolute reformer is the truest conservative.

But be careful not to fall into the opposite error, and, as do many, in your anxiety to avoid the

charge of *courting* an Attorney, be guilty of incivility to him. Simply behave as would one gentleman to another, without the constraint of fearing what your fellows will say, remembering this, that the Attorneys are now very superior as a class to the Attorneys of a former time; that they occupy a higher place in society, are better educated, discharge more important functions than they used to do, and may not, therefore, be treated as (if tradition tells truly) the Advocates of by-gone days treated their Attorneys. And if you so bear yourself towards them, sure we are that they will be most ready to recognise the propriety, and desire the observance, of the rules which, for a wise purpose, and with a view to the general convenience, forbid more intimacy in the place where both appear in distinct characters, with distinct duties.

## XXVII.

### PRACTICE IN CHAMBERS.

WE are now about to enter upon the most interesting, but the most difficult, division of our subject—the Practice of the Advocate. We are now to venture upon an unexplored sea, without chart or compass. With many of the topics that will come to be treated of, no attempt has yet been made to reduce them to writing; the wisdom that appertains to them is only traditionary, floating about the legal mind in indefinite forms, and often evoking contradictory opinions. Some have been deemed too trite and trivial, others too abstruse and indefinite, to be dealt with in books designed to train the young Lawyer in the duties of his Profession. But the plan of this treatise would be incomplete without at least an endeavour made to embody whatever properly falls within it, however trifling or however formidable. It must be pre-

mised that we approach the subject in no presumptuous spirit, not underrating its importance or its difficulties, thoroughly conscious that it might have better fallen into abler hands; but, having ventured upon it, resolved to spare neither time nor thought in the task,—praying patience if we are sometimes tedious, and forbearance if we often err,—we proceed, as minutely as the subject will permit, to state what are the various branches of Practice in which Counsel may be engaged, and in what manner these may be best conducted.

The Practice of a Barrister may be considered under two obvious divisions;—Practice in Chambers, and Practice in Court; each being distinct from the other in the qualifications required for it, in the manner of pursuing it, in the rules by which it is regulated. Capacity for the one by no means implies capacity for the other; a man may be wholly unfitted to play the part of Advocate in a Court, and admirably qualified to be an Adviser in Chambers. In fact, we find many persons loaded with briefs in the Courts, but rarely or never consulted in Chambers; and many, who are briefless at *Nisi Prius*, overwhelmed with papers in their Chambers. The latter, indeed, is perhaps the most *profitable* branch of the business, and scarcely less does it conduct to *honour*; for, of the Judges, as many have been indebted for their dignity to their reputations as Chamber Counsel as have won the ermine by their fame as Advocates.

Be not, therefore, discouraged merely because you may find yourself, after all your laborious

endeavours for self-improvement, disqualified to succeed as an Advocate; another path to success remains for you in which your industry and perseverance, being less dependent on physical and special qualifications, will reap their reward. Many a client will be glad to consult your *judgment* and your *learning*, who may be unwilling to trust his cause to your *tardiness of thought or imperfections of speech*.

But because the offices of *Adviser* and *Advocate* are essentially different and require different capacities, do not suppose that therefore you may, with safety, or even with propriety, embrace the one and dismiss the other from your studies and thoughts. Without *relying* upon that for which you are conscious that you are least qualified, do not abandon it altogether; still strive to the utmost of your ability so to prepare yourself for such accidental duties as may devolve upon you, that you may not appear entirely ignorant of them. Show, at least, that you know what is to be done, even if you are obliged to betray the want of capacity for doing it. You cannot anticipate the chances that may compel you to action in the field that is not properly your own. The absence of leaders may require you to play for a time the part of Advocate; you are *sure*, as a successful Advocate, to be sometimes consulted by your clients upon the cases which you are afterwards to conduct. Hence, such an essay as this would be incomplete without a review of the duties of Counsel in Chambers as well as of their duties in Court.

The Chamber Practice of Counsel is of two kinds—Drawing Pleadings, and advising upon Cases and Evidence. The duties of a Conveyancing Counsel are not included in this chapter, but will form the subject of a distinct one hereafter.

The Preparation of Pleadings is undertaken by two classes of practitioners—Barristers and Special Pleaders. The latter possess by far the larger portion of this business. The former are usually employed only in cases of peculiar importance; but, as we shall presently show, very often to the disadvantage of the suitor.

A Special Pleader is an unfledged Barrister. He is required to be a member of an Inn of Court, and to have kept his Terms, and then to take out a certificate, which entitles him to practice *below the Bar*.

But the uninitiated reader will probably ask with surprise, why, if to be a Special Pleader a man must have qualified himself to be a Barrister, he does not go to the Bar, instead of occupying such an anomalous position.

The real reason for this is that, by thus remaining below the Bar, he reaps the profits of the Bar, without its responsibilities; he can secure a large part of its business, without being subjected to its restraints. Nay, not only does he thus obtain a great deal which would not otherwise, perhaps, come at all, but he deprives the Bar of a vast amount of business which, but for the intervention of the Special Pleader, would go to it. This setting up by the Bar of a rival to compete with it upon



lower terms was as unnecessary and as suicidal an act as ever was committed; an error which we are unwilling to believe that it is yet too late to repair. The Special Pleader is not bound by the rules of the Bar as to fees, therefore he does the work of a Barrister cheaper than a Barrister may; and, consequently, he carries off an extremely valuable part of the Barrister's proper business. This might be remedied by a slight alteration. Either the profession of Special Pleader might be abolished and the members of it made Barristers in name and in responsibility, as they are now in advantage; or the rules of the Bar might be relaxed and Barristers permitted to accept the same fees as are now in practice established for Special Pleaders.

However, *as it is*, a very small portion only of the business of pleading is entrusted to Barristers, because we are not permitted to accept a less fee than one guinea, while Special Pleaders in all common cases accept half a guinea. This has converted Pleading into a business of itself, much, as we think, to the disadvantage of *the Law*. If it had been the universal practice for pleadings to be drawn by Barristers, probably we should not have been able to boast of the refinements of *the science* of pleading, which, thus abused, has become the art of *defeating* justice; but it would have been more in accordance with common sense and common honesty, and far more conducive to the objects of a legal tribunal, which *ought to be* the discovery of the *very truth*, and the application to it of the *actual law*. When Pleading is made a distinct business, it unavoidably degene-

rates into logomachy, and quirk and quibble come to be esteemed, and the advantages that result from them lift them into objects of ambition instead of reprobation.

But the practice of a Barrister, from its wider scope, directly destroys this tendency of a mind exclusively dedicated to pleading. The Barrister soon learns to look beyond the mere conflict of words; his thoughts turn to *the facts* that are the substance of the dispute, and, remembering what he will be called upon to prove or disprove at *the trial*, his impulse is to frame the pleadings so that they shall best *bring out the facts* it is his purpose to establish. This is also the reason why we think that the preparation of the pleadings should, more often than it is the custom, be committed to Counsel, and especially to those to whom the subsequent conduct of the cause is entrusted. Indeed, now that the Courts are daily declaring themselves more and more averse to mere technicalities, and discourage, by language and by favours denied, attempts to pervert justice and escape a fair trial by means of the verbal tricks of ingenious pleaders, it may be anticipated that the preparation of pleadings will be restored in a great measure to those who are certainly the most proper persons for the task, because they bring to it the knowledge of what will be required by a Court and a Jury, which is at least equally necessary with a knowledge of Stephen and Chitty.

It will, therefore, be requisite for you, after your career as a Student is closed, and before your prac-

tice is sufficiently extensive, by continual exercises, to keep up your knowledge of pleading acquired as a pupil. Every man's experience will tell you of the difficulty he had to encounter at the beginning, from the rust which gradually settled upon the knowledge acquired in his student days by reason of its non-user during the early days of his Barrister-life. A long time must elapse before you can fairly hope to have papers enough coming in to keep your hand in full exercise, and the *art*, if not the *science*, of Pleading—the mere technicalities and formalities—very soon escape the memory, if not kept there by continual practice. You should endeavour to compensate for lack of this, either by asking, *as a favour to yourself*, that the Pleader, whose pupil you were, will permit you to assist him by occasionally undertaking some of his papers, or by the less agreeable and less useful process of drawing sham pleas on imaginary cases.

When instructions to prepare pleadings really come to you, on your own account, you will be sufficiently conscious of your responsibility to give them due attention. You have most to fear from an over anxiety to be very correct. You will see so much to be thought of through the magnifying medium of importance with which the earliest cases of the young Barrister are invariably beheld, that you are not unlikely to be confused and to fall into errors from your excessive care not to err. Hence it is desirable, at the beginning, until this sort of excitement has passed away by familiarity with its cause, to submit your finished draught to an expe-

rienced friend before you return it, that his coolness may detect any blunder into which your heated anxiety may have betrayed you.

The rules for preparing Pleadings belong to the province of Legal Studies, and not to this treatise on Professional Practice. We, therefore, shall at once proceed to consider the other branches of Chamber Practice—*Opinions upon Cases*, and *Advising upon Evidence*.

## XXVIII.

### CASES FOR OPINION.

“*A Case*,” as it is technically termed, is a statement of facts upon which your opinion is sought as to what is the law applicable to the circumstances there detailed. It must come to you from an Attorney; and, according to the etiquette of the Bar, you cannot receive it directly from a client. Usually the fee is indorsed, and its amount indicates in some measure the degree of importance which is attached to the subject. But it must not be supposed from this that you will not give your best and most careful advice upon *every* matter submitted to you, whatever the amount of fee, only that a larger than the usual fee is a hint to you that there is something more than common in the case, which will require from you more than ordinary research and reflection.

The Case contains, *or rather ought to* contain (for frequently it is drawn with insufficient attention to that which should be the Attorney's particular duty—the noting of *every* fact, however trifling, and whether it tells for or against him), *first*, a narrative of the circumstances upon which the questions have arisen, stated in order of time as they occurred,—and if any written documents are necessary to be referred to, copies of them are appended, and reference made to them in the body of the case, by numbers; *secondly*, the questions to which the answers of Counsel are requested, clearly and succinctly put; and, *thirdly*, the attention of Counsel is directed to any cases or observations which may have occurred to the Attorney in his researches.

You will begin by reading the whole of the case, slowly and attentively, that you may master its general scope and purport. Then, taking a sheet of paper, make an analysis of it. If it consist of more than one train of incidents, give to each a distinct heading, and under it set down the material facts that belong to it, with their dates, and in the order of date. You may name them in the fewest words which suffice to recall the circumstances to which they allude, and thus you will have secured two important objects; you will have learned thoroughly the facts of the case, and you will have a bird's-eye view of it upon a single page.

Next, bethink you carefully, and with repeated reconsideration, what are the questions of law that

arise upon the state of facts before you, taking the questions put to you in the case for your guidance and assistance, but not relying upon them alone. Frame your own queries in your own language and according to your own impressions of what are the doubts actually arising out of the facts. Even if this were not desirable for your own satisfaction and proper understanding of the whole, you will find a sufficient reason for it in a few words which almost invariably close the particular queries proposed to you: "And generally to advise Mr. A. B. upon the case."

Having thus framed your own queries, your next care will be to investigate *the law* which they involve. And here let us impress upon you the importance of the rule, to *trust nothing to your memory*. Your impressions and recollections of the law on any point may be vivid, but you cannot be sure that they are correct, beyond a memory of the *general rule*; the exceptions, or to speak more accurately the *variations*, from it, owing to the introduction of some new element, are so numerous and so refined, that, without refreshing your memory from the text-books and the cases, you cannot be confident that the very point under consideration is not, either by express decision or by its analogy to a decision, one of those variations.

Another rule is to *consult the latest authorities*. So numerous are the statutes and decisions, that the most tenacious memory cannot retain them, and when this rule is not carefully observed, the most serious mistakes are apt to be committed, from

overlooking some recent case or statute which directly or indirectly affects the question before you. The task of consulting all the indexes to all the reports and statutes would be as formidable as it is indispensable, were it not that of late the labour has been performed for you by means of that ingenious invention, the *Digest*, which is to the Lawyer what the steam-engine is to the mechanic—it does his hardest work for him, saving him time, and ensuring to him accuracy. *Harrison's Digest* contains the cases decided at common law down to within a few years, and *Crabb's Index to the Statutes* performs a similar office with them. From the period at which that closes, the *Law Digest*, edited by Mr. Wise and Mr. Evans, on a plan still more complete and comprehensive, containing *every* case in *every* report, both at Common Law, and in Equity, in Bankruptcy and Insolvency, in Criminal Law and Ecclesiastical Law, in the Chief Courts of Ireland, in the Privy Council and in the House of Lords, together with the statutes of each session, has enabled the English lawyer to trace in a moment, with ease and certainty, if there be any and what cases, and where to be found, touching any subject on which he may be inquiring and how it has been affected by statute. As this *Law Digest* is published half-yearly, by consulting the *latest* part you will be sure of your law up to its date, and the reports digested in it being stated upon the cover, you have only to examine such parts of them as have since appeared, to be assured that no case or new law has escaped you which it would be neces-



sary for you to know in order to the formation of a correct opinion.

In the investigation of the law, where the facts are complicated, it is often very difficult to arrive at a satisfactory conclusion, because you have no sooner determined, as you suppose, the law on one part of it, than you find your deductions modified or overthrown by other facts and circumstances which require also to be taken into account, and unless you proceed methodically with your task and advance step by step, you will find yourself involved in a maze of perplexity, from which you will with difficulty escape, and your opinion will probably reflect in its obscurity the confusion of your mind. To avoid this the following process will be found effective:—

Take another sheet of paper, and having the case on one side of you, and your abstract of it on the other, begin with the earliest part of its history and set down upon the paper the legal result of the first stage of the proceedings; such and such were at that time the relative positions of the parties, and such their rights or liabilities. Advance then to the next stage, and carefully trace the effect of those new circumstances in changing or modifying the previous rights or liabilities. So proceed, stage after stage, however long the task, until you have arrived at the last period, which is the immediate subject of inquiry. You will be astonished to find how, by this simple process, confusion vanishes, the most complex questions are disentangled, and that which was a chaos becomes clear and orderly to

your contemplation. You will now experience no difficulty in forming your opinion upon the specific questions submitted to you, and upon the general merits of the case, and your next and concluding task will be to put that opinion into words.

Unless much pressed for time, do not write your opinion immediately. Sleep upon it. Your thoughts will be with it in your evening walk, at your fire-side lounge, and in the morning you will return to it with renewed vigour and often view it under a new aspect. Writing your opinion after this interval will be practically to give to it a second consideration,—satisfactory, if it confirm your first judgment, most important, if it should disturb it. Probably it may have occurred to others, for more than once it has done so to ourselves, that having begun to write an opinion with certain views, the accurate investigation of the reasons that were requisite to the statement of them made their weakness manifest or suggested more powerful ones on the other side, and the Opinion at the end was the very opposite of that with which we had started.

Hence the propriety of making *a draught* of the Opinion upon a distinct paper, before it is appended. Write it first, then revise, then copy it, if you please, or let your clerk do so, at the foot of the case.

An Opinion should be clearly expressed, and explicit in its result. Too often it is confusedly written, or so guarded in its language that it is difficult for the Attorney to understand its precise purport. Counsel are sometimes over anxious not

to commit themselves by decided views, where they feel considerable doubt. So far they are right; but, having doubts, they should say so, and decline to express an opinion; they should not appear to give an opinion, and yet so surround it with qualifications that it is, in fact, no opinion at all.

There is a saying in the Profession that an Opinion can always be procured on any side of any question. The Attorney has only to colour his case a little, and the Counsel to be a little biassed on behalf of his client, and there will be reasons enough for advising according to the wishes of the party seeking advice. Perhaps there is some truth in this, as in all popular beliefs; but it will be the duty of an upright Attorney neither to colour nor to suppress, but to place all the facts, whether they be for or against his client, fully and fairly before Counsel, and of Counsel to state his sincere opinion of those facts, without even thinking which side they affect.

Let it, then, be your endeavour to form a clear, determinate opinion upon a case submitted to you, and, having formed it, state that opinion firmly, distinctly and intelligibly, *with your reasons for it*; and if you can form no decided opinion, candidly say so.

There is some art *in the manner* of writing an Opinion. If you have seen many, you must have noticed how singularly they vary in shape, some being as logical and lucid as others are confused and obscure. Much depends even upon the form of putting it upon paper.

The most convenient course, both for writer and

reader, is to distribute it into distinct paragraphs, according to the subjects; and certainly the answer to each question should be given by itself. More readily to catch the eye, the answers should be numbered, like the questions, and the first line should begin without the margin, the other being what in printing is termed *indented* within it. Each answer should contain your Opinion, succinctly stated, with your reasons for it, and the cases, if any, upon which it is founded. Where you are unable to form a decided Opinion, say so; if you have doubts, declare them; if you see any difficulties, state them. Having thus candidly declared your views upon each particular question submitted to you, in the last paragraph state your *general opinion* upon *the whole case*, and here you should include any points that may have occurred to you to which your attention had not been drawn, but which you consider it to be for your client's interest that he should know.

If, as often it happens, you are asked whether you advise an action, under the circumstances stated, you should take especial care not to do so on slight grounds; you should weigh all the chances; anticipate the case on the other side; search out the blots in your own; make allowance for the natural tendency of litigants, in which their Attorneys cannot help sharing to some extent, to exaggerate their own case and depreciate that of their opponents. Remember that upon you it will probably depend whether he shall plunge into a costly, perhaps ruinous, litigation, and

before you advise what he can do safely—*think twice*.

By observing these rules you will obtain the reputation, which you will then deserve, of being a *safe* adviser; your opinions will become *authorities*; they will be sought, because they are at once cautious and intelligible, and although it is a fame which is of all others of the slowest growth at the Bar, it is sure when it comes; it is a most interesting and improving mental exercise, and its substantial results, as a profitable branch of your Profession, are not to be despised.

## XXIX.

### ADVISING ON EVIDENCE.

WE have purposely separated this from the subject of the last chapter, because, although there is much similarity in form, and many of the same rules are applicable to both, the principle that should guide the mind is different. Your object in giving an opinion upon *a case* submitted to you should always be to ascertain and state the very truth of the matter, without reference to any interest or desire to please your client, by leading him to suppose that your judgment coincides with his wishes. Your object in advising upon *evidence* is to show your client how he may best establish his own case. In the one, your duty is that of a Judge, in the other, it is that of an Advocate. Perhaps it is scarcely necessary to remind you that these different duties demand the exercise of different faculties of the mind, and different trains of thought.

The case upon which you are to advise should

set out all the pleadings in full, and the evidence, so far as the Attorney has been enabled to procure it; and if there be any gaps in it, of which he is aware, the Attorney should indicate them by a marginal note, and state the reason why the desired testimony cannot be produced. These cases are often very carelessly drawn, a general statement of the facts being transmitted, instead of the evidence itself, as taken from the lips of the witnesses. Counsel can only advise upon the facts *as stated*, and if at the trial they are not borne out by the testimony, the cause is lost, and the favourable opinion of the advising Counsel is then not unfrequently adduced as an excuse to the disappointed client, who vents his wrath upon the unhappy wig, which, after all, had rightly advised upon the case *as it was stated*. Therefore, whenever you are asked to advise upon a case that is imperfectly stated, be careful to let it appear in your notes that your opinion is given upon the assumption that the facts asserted will be proved by the witnesses, and that you write with reservation, because you have not the material for a decided opinion. This is due alike to your own reputation and to the interest of your client; nor will it offend any Attorney whose support is desirable, but, on the contrary, it will greatly increase his confidence in you. A *cautious* Counsel is always preferred by a *prudent* Attorney.

The case thus fully stated, first, read it over without note or comment, in order to obtain a general outline of it.

Take, then, a large sheet of paper, and, spreading it before you, prepare to analyse the whole case.

Begin with the pleadings, upon which you cannot bestow too much care, for by them the entire of the evidence is governed. The case can be proved only as it is pleaded; you cannot travel out of "the issues joined between the parties," and what is pleaded must be proved, if it be denied. Therefore it is that, in order to advise upon the evidence satisfactorily, you require to be thoroughly acquainted with the pleadings.

What are the issues raised? What must your client prove to maintain his pleadings? What must the other party prove to support his? Again, what facts have been admitted upon the pleadings by your client, what by his opponent, and what remains to be proved on both sides?

An analysis of the pleadings, on the sheet of paper which we have requested you to spread before you, will answer these queries more clearly than it could be done by any merely mental process. In one column, state the counts in the declaration, very briefly, so that they may be in a manner intelligible to you. In a second column, set against each count the defendant's answer to it by his plea. In a third column, state the replication, and so on until the substance of the pleadings is all before you in parallel lines, so that you can see at a glance what is the position of the whole case, what is answered, what is admitted, what is denied, upon what issue is joined, and then *what is to be proved*.



With this chart distinctly traced in your mind, and with the paper before you to refresh your memory, proceed to the study of the *evidence*; but first, upon another sheet of paper, set down in column on one page the matters which, according to the pleadings, are to be proved by the plaintiff, and also, in like column, on another page, the matters to be proved by the defendant. Then, going slowly and thoughtfully through the evidence, trace what each witness can prove, and set his name, with a very short indication of the particular facts he speaks to, against the particular pleading in the column to which it applies, and so on until you have gone through the whole of the evidence in the case. But your task is not yet done, you have only made good preparation for it and vastly facilitated its performance.

You may now begin to write your commentary, and this also you should first do in draught. Take each item of *things to be proved* as it appears in your abstract of the pleadings, and ascertain if the evidence, as it stands, *does* suffice to prove it. If such should be your opinion, so state it. If otherwise, point out the imperfection and state what is necessary to be supplied.

And in writing observe the same methodical arrangement suggested in the previous hints for the giving of an opinion upon *a case*. It is not *necessary* to set forth the issues which you consider to be sufficiently proved, but, unless the case is otherwise a long one, it may be more satisfactory to your client that you should do so. But let every

*in*completely proved issue be described in a separate paragraph, and each paragraph should be numbered for convenience of reference, the first line commencing without the margin, and the rest indented within it, so as to catch the eye on the instant.

State in explicit terms what is the defect, and what is required to supply it, and add any hints that may suggest themselves to you as to the *kind* of testimony that would be desirable, where it might be sought, or how procured, and such other advice as your experience as an Advocate will be sure to help you to, and which may materially assist your client in the getting up of the case.

And to do this efficiently you must adopt the only plan which will enable a Lawyer, whether acting as Counsellor or as Advocate, to advise or act with safety. *You must anticipate the case on the other side.* You must put yourself, *in idea*, in the place of Advocate for your opponent, and try thus how *you* would meet this, or evade that, and what answer, by argument or by evidence, you would produce against those which you are engaged in arraying on your side. Thus, and thus only, will you discover the weaknesses of your own case, which it is as necessary for you to know as those of your adversary's case. If you do not thus change your position, you will be sure to take a partial view, and to overlook a great deal that will come upon your client unprepared to meet it. Many a good cause has been lost for want of this preliminary review of both sides of it.

Another matter which will require your parti-

cular attention is the nature of the *documentary* evidence. The importance of this cannot be overestimated, for more defeats are sustained through imperfections in proof of written documents than by any other kind of informality. To prevent the possibility of oversight in this, make a list of the documentary evidence, and set against each one the proofs that will be necessary to its admission, and as you find them stated in the case, score the proof so provided for, and then you will see at a glance what remains to be procured. As this is a subject which falls peculiarly within the province of Counsel, it would be as well for you to state, in your opinion, the proofs which each document will require, including those of which you *are*, as well as those of which you are *not*, informed, that the Attorney may precisely understand what he must supply. See also to the *stamp*.

Lastly, you must be very careful in distinguishing the *secondary* from the *primary* evidence, so as to ensure the necessary notices to produce being given, in order to let in the former. Make a similar list of the secondary evidence, and add it to your opinion, with a statement of the sort of notice that should be given, and to whom,—in order to permit of its production at the trial.

Write all in perspicuous language, and in short sentences, always using the same word in the same sense, and then, having copied your notes upon the case, return it as speedily as possible. The maxim, *bis dat qui cito dat*, applies to *giving an opinion* at least as emphatically as to any other gift.

Although it will sometimes happen that time will not permit you to write your opinion in draught, you should endeavour in *all* cases to preserve a *copy* of it. For this purpose keep a blank book, in which your clerk should be required to make a copy of every opinion before he despatches it, numbering it, and having an index *both to the subject-matter and to the name of the case* ; so that if you should need thereafter to refer to any one, it may be found readily. If for no other use, it is often very interesting, after the same question has been formally decided by the Courts, to turn back to your opinion and see how far your anticipations were borne out by the result, or in what you erred; and if you have any success in your profession, you will often find it impossible to recall, by the memory alone, what was the advice you had given. The only way in which a Lawyer in large practice can get through his work, without becoming insane, is by the process of *forgetting*. As soon as a case is fairly out of his *hands*, it must also pass out of his *mind*, or the burden would soon grow to be greater than he could bear.

Another suggestion we may here throw out to you; that you keep a *fee-book*, from the date of your first fee, and never fail to insert in it every fee you receive, as well as those *not* paid. It is curious as well as useful. It is the best record of your professional progress, and the study of it will often serve to guide you in some of the most momentous eras of your life. Do not buy any of the printed forms of fee-books which you see in the

shops, but procure a blank *quarto* book, and let your clerk rule it and make your entries after the following fashion, and be careful to enter *all* the particulars here set forth:—

Date.	Name of Case.	For whom.	Subject.	Result.	Attorney.	Fee.
1852.						£ s. d.
Trinity Term	James v. Challis	Plaintiff -	Ejectment	For plaintiff -	Edwards -	3 3 0
	Sims v. Carter	- - -	Rule - - -	- - -	Harris -	0 10 6
Devon Sessions	Reg. v. Hobbs	Prisoner -	Arson -	Acquitted -	Colley -	2 2 0
	Thorne v. West Ham.	Respondents	Removal -	Order quashed	Jones & Co.	3 3 0
Easter Term	- Signing plea -	- - -	- - -	- - -	Turner -	0 10 6

Such as are not paid you can so mark with a pencil in the margin that your clerk may not forget to procure them, for although the *theory* of the Bar is that the fee should be paid with the brief, it is impossible in practice to enforce this rule, and it is not done by anybody. A regular client will not pay every guinea separately, but at the close of a Term, or at the end of an Assize or Sessions, he will pay the whole in one sum.

The uses of such a fee-book as is described above are manifold. It is a matter of curious interest to you to trace thus your rate of progress, year by year, and this will be conveniently shown by devoting a page at the end of the book to a summary of each year's results, stating in columns the number of cases that have come to you, and the total amount of the fees. This list will also, if you will take the trouble so to analyse it, show you what success has attended your efforts—how many of the cases you have won, how many lost—what classes of business have increased or diminished,—serving thus to guide your future course of study, and to direct your efforts to that which appears to promise the most of success. There is another indirect advantage from such a careful and minute keeping of a fee-book, that it will show you what is your income, remind you day by day what are your real resources, and so prevent your being deceived by false impressions of progress. Beginners at the Bar are very apt to be flushed by unexpected successes. Half-a-dozen briefs at an Assize or Sessions beyond the anticipated number

induce a strangely exaggerated imagination of the amount of *pecuniary profit* thus produced. It is, indeed, extremely difficult, and requires no small self-command, to distinguish between professional *success* and professional *income*. Because juniors justly attach so high an importance to a pile of briefs lying before them, as being indications of *future* fortune and flattering *promises* of success, they are wont to attribute to them also a higher *pecuniary* value than they actually yield, and to increase their expenditure accordingly. But the young Barrister cannot be too often reminded that the *income* upon which he can count, whatever his success, is extremely small. In an earlier part of this essay we have given the results of five years' experience of a successful man; we may add to the startling facts there disclosed two or three more that belong to the present subject. From the same fee-book, during the same period, we find that the fees did not yield upon an average *more than a guinea and a half* on each brief, and consequently to produce a net income of 100*l.* a year beyond your necessary professional expenses, you will require to receive, in the course of the year, no less than *one hundred and seventy briefs*,—a number which would give to a man the appearance of having a great business, and, indeed, would really be such. Beware, then, lest you mistake professional for pecuniary prosperity, and to prevent this, study your fee-book often, and calculate products before you presume to spend.

## XXX.

### READING A BRIEF.

BEFORE we suggest to you the best methods for reading briefs in the different classes of cases, which may be more conveniently done when we come to treat of the various kinds of practice upon which an Advocate may be employed, we will endeavour to give you a few hints for the reading of briefs *generally*, and so to avoid repetition.

You will probably be much surprised and amused, when you begin your practice, at the extraordinary compositions often placed in your hands under the name of briefs. Some will be drawn with masterly skill, marshalling the facts and setting out the evidence, collecting the cases and suggesting arguments; while others will be almost unintelligible, confused in language, and entirely wanting in arrangement. Occasionally you will be left with no instructions at all, or only the very scantiest statements of the outlines of the case, your imagination being presumed to be such as to supply whatever has been omitted by the



composer of the brief. Sometimes, instead of a plain narrative of facts, you are favoured with a facetious commentary, or a sort of peroration for your speech. It is scarcely necessary to tell you that you must at once reject all such impertinences, and look only to the *proofs*. A brief consists of several parts. 1st. It states the names of the parties, the court in which the case occurs, and the nature of it. 2nd. It sets out the pleadings in full. 3rd. It gives in a narrative form the history of *the case*, with a general account of what the claim or charge is, and what the defence. 4th. It presents in detail the evidence of each of the witnesses. • 5th. In conclusion, a commentary should suggest whatever may have presented itself to the Attorney in the course of his investigations, with which it may appear to him that Counsel should be acquainted; and here should be stated also *the law* which he supposes to bear upon it, with references to the text-books and reports.

In this, as in perusing a case for your opinion, you will begin by slowly reading through the brief. Then turn to the pleadings, and analyse them in the margin, until you have eviscerated the precise issues to be proved or disproved. Then, bearing these fully in your mind, read the statement of *the case*, scoring with your pen, as you read, such parts of it as are material to those issues. Then read *the proofs* in the same manner.

It will continually happen that, among the proofs, is a great deal which is *not evidence*, as hearsay and so forth; it is very important that you should

exclude this from your thoughts, and still more so that you may not be misled by your brief to put to the witness questions which are not legal. To avoid such a mischance, you should score the objectionable passages with a double line in the margin, and set against it a great "0," which will catch your eye instantly, and prevent your putting the question, whatever the hurry of the moment. Score with a double line the *very* material portions of the evidence, and indicate them also by some sign in the margin, as a cross, or any other your fancy may prefer, only taking care to continue to use the same signs as you begin with. In the margin state also any matters contained in the evidence to which you may have occasion to refer in the course of the trial, as names, dates, numbers, &c., so that, when you need them, instead of hunting for them among the crowded pages, you will have but to cast your eye over the margin of each page and they will be found instantaneously. These minutiae may appear unimportant, but, until you have experienced it, you can form no conception of the difficulty of finding a name, or a date, or a number, amid a mass of writing, especially when you are hurried and the court waits your search; every contrivance, therefore, for facilitating discovery and bringing the principal facts, as it were, to the fingers' ends, will be found to deserve your attention, and you will hereafter thank us for a hint, which is the product of practical experience of its utility.

In simple cases, where the witnesses and facts

are few, this process will suffice; but where there are *chains* of evidence linked together, the same witness speaking to different parts of the case, it will be necessary to make a complete analysis of the whole case upon the back of your brief. This requires some natural aptitude for methodical arrangement, and a good deal of practice to perform it skilfully and rapidly. It is difficult to describe the process without an illustration, and you must therefore excuse us if we fail to make it intelligible to you. First, you must arrange your case into parts, according to the various chains of facts to be proved. Then, beginning with the first part, state under it, as briefly as you can, the evidence that belongs to it, especially names and dates, and the names of the witnesses by which those facts are proved. Thus do with each of the divisions. If it be required, as often it is, to subdivide, still pursue the same plan; and in order that all the divisions and subdivisions may catch the eye in a moment, even in the midst of a speech, let the commencement of each division be placed conspicuously in the margin, and the names of the witnesses who prove the facts in a distinct line, that you may in like manner recal them should you chance to have forgotten them. When addressing the jury, this analysis should always be open before you, for reference by the mere downward glance of the eye, so as to avoid the suspicious appearance of being imperfect, which results from a pause while you are turning over your brief in confusion to find something which, because you are in such haste, you cannot find.

In cross-examination of witnesses you will often require to be reminded of some points apart from those which are immediately suggested by the examination-in-chief, and which, when your mind is engrossed by the latter, you will be very apt to forget. These usually arise out of instructions contained in your brief among the "Remarks" which an intelligent Attorney will append to his statement of the case; and as these are found upon a different page of the brief from that which contains the evidence of the witness, it is often extremely perplexing to be obliged to turn from one page to another, in order to ascertain that nothing has been omitted.

This inconvenience can be most easily avoided by the simple practice of setting down *upon a paper distinct from your brief* the hints for cross-examination, and if you are careful to have this paper lying before you during the trial, you can, as the case proceeds, add to it such suggestions as may then occur to you. It will suffice merely to place conspicuously in the margin the name of the witness, and then, in the fewest words that will remind you of your purpose, the subject-matter upon which he is to be cross-examined. The simplicity of this plan must not induce you to deem lightly of it. It effectually removes a great practical inconvenience, which can only be understood by those who have experienced it.

So much for the *Evidence*.

In the like manner you must marshal your points of law. These should be taken in the order in

which they are likely to arise at the trial, and upon the back of your brief, or (which is very much more convenient, because you may require to turn over your brief for reference to facts, or to keep it unmoved for the purpose of taking notes) upon a separate paper, set down each point in succession, and under it the heads of the argument and the names and references of the cases by which you support it. For this purpose you should study *brevity*. You will usually find a word or two sufficient to preserve the train of thought, and the act of setting down the heads of the argument will not only perfect you in it, but it will prevent you from wandering away from it when you come to put it to the Court. The links of the chain being thus before your eyes, it will be hard indeed if you cannot contrive to keep them together. Moreover, if you have a bad memory for *names*, you will find this summary of the cases to which you intend to refer an invaluable assistant.

The last care in reading your brief will be to sketch a similar outline of your argument to the jury. This will, of course, be unnecessary if you are acting as junior only, for the duty of a speech will not then devolve upon you. But, if you are alone, or leader, and the case is one that requires anything more than a few *observations*,—if, in fact, a *speech* is expected,—you should prepare for it, not by writing it, for that is dangerous always and often destructive, but by sketching *the plan* of it, that is to say, the order in which you propose to deal with the various topics. This you should set

down, either upon the *outside leaf* of your brief, or upon a separate paper, putting it in columns, the principal divisions without, the subdivisions within, the margin, writing it in a round bold hand, so that the eye may read it readily as it lies upon the table. A sketch of your argument being thus spread before you as you speak, without effort, without pause, without the unpleasing effect of reference, you will be enabled to refresh your memory, and to be assured that you have omitted no topic, upon which, in your deliberations, you had determined to dwell.

The labour of these preparations may appear to be great; but it is not more than is necessary for the proper understanding and satisfactory conduct of your case. You will, perhaps, perform it slowly at first, but you will find it every day a task of less toil, until it becomes almost mechanical, and you will arrange your case with a rapidity which will astonish yourself. Only thus can you go into court thoroughly prepared for action, and the advantages that will arise to you then, both in personal satisfaction and in reputation, will amply compensate your previous toil.

These hints, however, are intended as suggestive only. Each mind will, perhaps, better attain its end by its own methods; but let us impress upon you that *some* such process cannot be safely avoided, and we have described how it can be accomplished, in order that, if you have no better scheme, you may make use of it, or of such parts of it as you may approve upon trial of it.

## XXXI.

### CONSULTATIONS.

**AFTER** you have read your brief, and previously to the trial, you will probably be invited to a *consultation*.

This is, or rather *ought* to be, a meeting of the Counsel and the Attorney, for the purpose of deliberating upon the course to be pursued in the conduct of the cause, and at which each should freely communicate to the others his own opinion, and to all opinions a careful consideration should be given, at least if there be any truth in the proverb that "in a multitude of counsellors there is wisdom."

But consultations are not always in fact what they were intended to be and ought to be; too often they are but a mere form, hurried over in ludicrous haste, the Leader consulting nobody and pronouncing an opinion *ex cathedrâ*; then the briefs are tied up, and the junior Counsel and the Attorney are politely

and perhaps graciously bowed out, without having exchanged a word.

Of course nothing is gained by such a consultation, except the fee, and as a Junior you have no help for it but to submit. You are not allowed to volunteer your opinion unless your Leader asks for it. It would be deemed an impertinence if you were to offer it.

But with some Leaders, and sometimes with all, consultations are not thus summarily dismissed; and as you cannot anticipate the mood in which you will find your Leader on the particular occasion, you must always be prepared to play your part worthily, should you be called upon. It may happen that the case is a difficult one, involving a complicated state of facts, and some points of law, and then it is extremely probable that your Leader may not have given to it the time necessary for the proper understanding of it, and he will rely upon his Junior to put him in possession of *the points*. In such a case he will probably greet you with his most gracious smile, and condescendingly say, "Well, Mr. R——, what is *your* opinion of it?" Whereupon you will be expected, without betraying the slightest suspicion that he is not as familiar with it as yourself, to state to him the principal points that will probably arise. These will have his assent as you state them, and, taking a note of them upon his brief, he will proceed, with that astonishing readiness of apprehension which the practice of an Advocate so cultivates, seriously to consider them, and to put to the Attorney divers



questions as to the precise nature of the evidence by which he proposes to establish or rebut the facts, and to you as to the cases which you have found to support the law. With all these you ought to be well prepared; for, if your leader finds that you thoroughly understand your case, he will rely upon you at the trial, and listen to your suggestions, and advise with you upon it in its progress, greatly to your own edification. If, on the contrary, he sees that you have not mastered it, he will treat you as a mere note-taker, and neither invite you to his councils, nor trust you with more of the conduct of the case than etiquette compels. In the former case, he will be glad to have you associated with him again; in the latter, he will be averse to you, and this is soon discovered by the Attorneys, and your fortune is made or marred accordingly. If you have taken the trouble to prepare your brief in the manner recommended in the preceding chapter, you can scarcely fail to show yourself such a master of your whole case as to secure the confidence of your leader, and to establish your reputation with him, and with the Attorney, who knows precisely what credit is due to *you*, although by the general public all is given to your leader.

It will happen very frequently that, besides these formal consultations, which are, of course, regularly fee'd, the Attorney desires an interview, for his own satisfaction, on some questions of evidence, or on doubts that have arisen in his own mind, but for each one of which he *could not* charge his client with a consultation fee. Whatever may be the

strictness of the rule as to making every interview a consultation, and requiring a fee accordingly, in practice this is not and cannot be exacted; and, no less for your own satisfaction than for that of your client, it is desirable that you should encourage rather than show any aversion to a frank communication with the Attorney at any time and as often as he may require to see you, upon any matter connected with the cause. It happens not unfrequently that the Attorney is deterred from communicating to his Leader in consultation all that he desires to say, and it is a satisfaction to him to go to the Junior and tell him his doubts, and thoughts, and fears, and hint at points which his modesty had withheld from the more distant Leader. It is scarcely necessary to remind you that, whatever may be your Leader's bearing, you, as a Junior, have no right to bear yourself distantly and haughtily, and assume airs of superiority of knowledge, which only long experience and success render endurable. *Your* duty and *your* interest are to welcome all such communications, to encourage the Attorney, probably far more experienced and skilful than yourself, to *help you* in the getting up of the case. He will look to you for the law, and for an impartial judgment of the value of evidence; but it is probable that you will be able to learn from him at least as much as he will learn from you. Therefore, do not begrudge time, nor look impatient, nor play the sage, when he comes to you; but hear him to the end, deliberate with him, and gather from him all that he has learned

in relation to the matter in hand, and afterwards you can use that information at your discretion.

In like manner bear yourself to him if you are alone in the case. Be not too exigent of consultation fees. Require, of course, the *formal* consultation with its regular fee, but do not deprive yourself of the assistance of the Attorney, because he cannot, with justice to his client, give you a guinea every time he asks you a question or makes a communication. Let him feel that you are pleased to possess all the information he can gather for you, and that you are desirous that nothing shall be wanting on your part by which success may be assured, or defeat avoided.

Thus will you have accomplished all that diligence and prudence can perform, and you will go into court confident that, if you fail, defeat will not be the consequence of any neglect of yours, but of the weakness of your cause. Whatever the result, there will be nothing with which to reproach yourself, and if your reputation be not advanced, it will not be damaged, by the display which you have made of your capacities.

## XXXII.

### THE PRACTICE OF THE COURTS.

WE have now arrived at the most important, the most interesting, the most laborious and the most difficult, portion of our task—a description of *the practice* of an Advocate before the various tribunals—and in the performance of it we will endeavour to observe the same plan of minute detail which we have hitherto followed, preferring rather to be tedious through too much particularity, than to omit any thing that might be useful to the reader ; remembering that every man's experience has shown him that it is in matters apparently trifling he is usually most deficient, and that the most useful guide is he who will condescend to tell him *common things*.

So wide and various a subject will require to be treated systematically, or there will be liability to confusion and repetition. The latter, indeed, it will be very difficult altogether to avoid, because many

of the topics, differing too much to be blended, are yet in some points so alike that it will be almost impossible to deal with them without repeating what has been said before. But it shall be our constant aim to avoid this inconvenience, wherever it may be practicable without destroying the completeness of the design.

Perhaps the better course will be to treat of the practice of an Advocate in each of our courts separately, as at Nisi Prius, in the Criminal Courts, in Banco, in Equity, in Appeals to the House of Lords, at the Privy Council, at Quarter Sessions, in the County Courts, before Magistrates, at Arbitrations, in Parliamentary Committees and so forth. In dealing with these, we propose to follow in each the order of the proceedings in an ordinary case, describing minutely what should be done by the Advocates in conducting it from its commencement to its conclusion; and this will introduce the subjects of the examinations of witnesses, the addresses to the Court and the jury, the principles that should guide these, the rules, both legal and rational, by which they are governed, dwelling mainly upon what might be termed the *common sense* of the theme, as derived from observation or taught by experience. It is no part of our plan to resort to the logic of the schools; they who have faith in *that*, as a means of commanding the judgments of their fellow men, will neither require nor seek the assistance of such humble teachings as these, which do not pretend to more than a plain matter-of-fact account of the manner in which juries and judges

appear to be most readily convinced or persuaded, by addressing them in the language of every-day life and in the common forms of speech. Hence the Student will be disappointed who hopes to find here anything very learned or profound, or even so much as Aristotle modernised or Whateley made easy; he will, indeed, probably be inclined to exclaim at the end, "And is this all—anybody could have told me this." And so anybody might have done; but, because anybody *might*, nobody *has*, done so; and it is only because it has not been done yet, that we hope to benefit some readers by now doing it.

## PRACTICE AT NISI PRIUS.

The preparations for *going into Court* are presumed to be completed, your brief carefully read and noted, as described in a former chapter, and your mind *saturated*, as it were, with the facts of your case. The cause is called on, and the trial begins.

The Junior *opens the Pleadings*; that is to say, he states to the jury the proceedings through which the issue or issues have been arrived at which they have to try. This should be done in the *shortest* and most simple manner. Nothing can be more absurd than to hear, as one often does, a long string of technicalities read to a jury, to whom every second word must be unintelligible, and the effect of which must be to perplex them at the very beginning of their task, and thus to some extent prevent them from approaching it with such clear

intelligence as if it had been introduced to them in plain English. If the form of opening the pleadings be requisite at all, it should be so done as to be understood by those to whom it is addressed; and if it be not requisite, it ought to be abolished. But, in truth, if done judiciously, it would be a useful proceeding, for it would give to the jury a bird's-eye view of the case, and enable them the better to understand the subsequent statements. To make it such, however, you must have the courage to depart from the habitual practice; you must dare to put your learning into unlearned shape, to hazard the sneers of that large class of lawyers who contemplate law as a phrase rather than as a fact, and whose notions of knowledge are limited to its technicalities. You must learn to disregard such critics. When assured that your course is the *right* one, follow it fearlessly, and rely upon the common sense of your profession, which is sure in the long run to prevail, to do justice to your motives and to attribute your departure from accustomed form to prudence rather than to incapacity. As this is one of the forms which would be far more honoured in the breach than in the observance, we will tell you how, in our humble judgment, confirmed by that of some more worthy ones to whom we have upon occasion hinted our views, this process of Opening the Pleadings *ought to be* performed.

Make your statement intelligible to the jury by putting it in an intelligible shape, and in language which they can understand. As thus:—

“Gentlemen of the Jury,—In this case John Doe is the plaintiff and Richard Roe is the defendant. The action is brought to recover the sum of 21*l.* and interest, being the amount of a bill of exchange drawn by the plaintiff upon, and accepted by, the defendant. In answer to this claim the defendant has pleaded, 1st, that he did not accept the bill; 2nd, that he has paid it; 3rd, that it was obtained by fraud; 4th, that no consideration was given for it. Upon these pleas issue has been joined, and these are the questions you have to try.”

But it will be said, perhaps, that however practicable this may be with so simple a case as an action on a bill of exchange, it could not be done where the pleadings are more technical, as in an action of trespass, *quare clausum fregit*, for instance. This, however, will not be found incapable of interpretation into intelligible English, to the happy dissipation of much wondering ignorance among the audience at the mystery and perplexity of their laws. Let us make the attempt.

“Gentlemen of the Jury,—In this case John Doe is the plaintiff and Richard Roe is the defendant. The action is brought to recover damages for a trespass by the defendant upon certain premises of the plaintiff, in Ide, in the county of Devon. The defendant has pleaded, first, that he is not guilty of the said trespass; second, that he entered the premises in question by the leave and licence of one James Brown, who was the tenant in possession of the said premises. To the second



plea the plaintiff has replied that the said James Brown was not in lawful possession of the premises, nor entitled to give such leave and license, and these are the questions you have to try."

A statement somewhat in this form might be made with equal ease, however various, complicated, or technical the pleadings, and, indeed, some such sketch of it must have been drawn in the pleader's mind, or set down upon his notes, before he put it into technical form.

This may sound strangely at first, but it is so rational a plan that it is sure, after a while, to commend itself to the good sense of the Judges and of your fellows at the Bar, and, however they may smile, they will follow your example in the end; you need only some degree of courage to begin the innovation and to persevere with it until it ceases to be a novelty.

The pleadings opened by the Junior, the Leader proceeds to open the case to the Jury, and should you chance to fill this honourable post, you may glean some hints for your task from the following remarks:—

As a general rule, the statement of the case for the plaintiff should be calm, temperate, and dignified, orderly in arrangement, lucid in language, and as brief as the facts to be told will permit. Remember that a plaintiff is supposed to come into court to demand redress for a wrong that has been done to him: he is there *of his own will*, invoking the aid of public justice to procure compensation for his private injury. You cannot

more effectually awaken in the Court and the Jury a sympathy for your wronged client and indignation against the wrong-doer, than by a simple description of the injury, and a careful abstinence from angry comments, personal abuse and other indications that revenge rather than redress is the object of the plaintiff. It continually happens that a prejudice against a case is excited at its very opening in the minds of the Judge and Jury simply by the display of an excess of zeal on the part of the Counsel and injudicious indulgence in personal reflections, before a foundation has been laid for them by proof of facts which justify reproaches. An orderly and lucid statement of the case, keeping as closely as may be to the order of time in the relation of events, is almost always desirable; because a plaintiff, who is the mover in the action, and comes voluntarily into court, may be supposed in most cases to have the right on his side, and always to have some probable foundation for his claim; so that it is very rarely *his* policy to throw a fog about his case.

You will begin, of course, with an account of the parties, who and what they are, and the circumstances that led to the present dispute; then you will state with precision the nature of the dispute itself, and whether it is upon a question of law, or of fact, or both, with the very points at issue, the one for the information of the Court, and the other for the information of the Jury, that attention may be directed more readily and surely

to your evidence as it bears upon those points. Of so much importance is this, that you should take some pains by previous preparation to put them into the most distinct shape, and you should repeat each one *totidem verbis* whenever you introduce your statement, and when you close the evidence that bears upon it. Then, taking each of these questions in turn, state, in the form of a narrative, the proofs you propose to produce in order to its establishment, and in so doing be very careful to show no misgivings about it, by anticipating objections, apologising for defects, or making an effort to give weight to certain witnesses, for you must *assume* that they are unimpeachable until they are shaken by your opponents, and their testimony to be conclusive until it is shown to be otherwise. If you display the slightest doubt about your own case and your own witnesses, they will be at once suspected to be far worse than they are; they will be heard with a prejudice against them, and small errors which, unsuspected, would not have been noticed, are instantly enlisted to confirm the foregone conclusion of the audience. Hence, too much emotion, too much anxiety, too much elaboration, and too much effort, in an opening speech, are calculated to damage the cause, by exciting a suspicion that it is not so good a one as it should be, and then it becomes a difficult task for you to combat a prejudice as well as to convince. You should reserve your energies and your eloquence for the *reply*.

Strange as it may appear, there is nothing more

difficult in the art of Advocacy than effectively to open a case to a Jury. The proof of this is the rarity of the exhibition. How few of our Advocates accomplish it to the entire satisfaction of a critical listener! How few possess the faculty of marshalling facts in their natural order, and taking up and so interweaving distinct threads of a story as to form a clear, continuous, intelligible narrative. Even if he can thus arrange his facts, there is seldom found in the same person the faculty of describing them graphically, so as to *paint them* upon the minds of those to whom they are addressed. Yet, unless thus presented, glowing with colour, substantial in form, and instinct with life, no clear image, whether of places, persons or events, is summoned to the mind's eye of a listener; at the best, he obtains but a confused, shadowy, uncertain conception of the scene you desire to convey to him.

The best means of learning how to affect others is carefully to interrogate your own experience and see how you are yourself affected. In the broad features of humanity, we are all very much alike, and if we would more frequently examine ourselves and ascertain what are our own impulses, and how we are acted upon, we should not fall into so many errors as we are wont to commit when dealing with other people. This close family resemblance of mankind, however differing in external circumstances, in race, or colour, or creed, or country, or class, is a fact which it peculiarly behoves the Advocate to recognise, for it will, more than aught

beside, enable him to plumb the depths of the hearts, and measure the heights of the intellects, of those with whom he will have to deal in the course of his practice, whether as judges, as jurymen, or as witnesses.

Continually shall we have occasion to remind you of this in the progress of the hints we are about to submit to you.

It must not be forgotten when you open your case to the Jury. Remember what is your purpose. It is your object to convey to them and to the Court a history of your case, so that they may thoroughly understand what is the subject-matter of the contention, upon what grounds of claim or complaint you come into court, and the evidence by which you purpose to establish them. Now, to make any narrative clearly intelligible, the first care is to observe as closely as possible *the order of time* in the detail of the events. You will commence, of course, with a description of the parties, who and what they are, with the addition of any circumstances in the position of either of them which may affect the case by explaining subsequent transactions, or aggravating the damages. If locality is in any way concerned, describe then the *locus in quo*, and if it be possible to procure it, in all cases use a map for this purpose. The rudest drawing of a place is more intelligible than any verbal description, and it has the still more important use of at once arousing, and fixing upon the story, the attention of the Jury. Their curiosity is awakened even by this slight taxing of their own ingenuity and by

the effort which they make to *realise* in their minds the aspect of the spot thus suggested. Your words then become pictures to them, and by the time you have completed your sketch, each of them has in his mind's eye not those lines and dots only, but buildings, and walls, and fields, and doors, and gates, distinct as if he had seen them, and each is eagerly curious to learn with whom they are to be peopled, and what adventures have occurred there upon which he is to pass a judgment.

But if you fail to paint this picture on their minds, if their ideas of the place be imperfect or confused, the perplexity will extend to the subsequent narrative; not clearly understanding your allusions, they will listen for a time, but with little profit, and then they will probably abandon the vain attempt to follow you, and averted looks and uneasy gestures will inform you too plainly that your labour has been lost, and that you will leave them in a rather less favourable condition for your client than you found them.

Having described the persons and the place, take up your narrative at such period preceding the immediate matter of controversy as may be necessary to explain the causes of it—to use a legal phrase, begin with *the inducement*. Show how it was that the conflict arose. Then, describe minutely, with careful reference to the plan, if there be one, the subject-matter of the dispute and the precise questions which the jury will have to determine in relation to it. This done, you will proceed to state

*your* case, the facts and arguments upon which you rest your claim to the verdict.

Advocates do not always make this statement in this part of their opening. Often they reserve it for the close, preferring first to state their evidence. But consulting, as before suggested, one's own mind for the manner in which conviction is most readily produced, it appears that, to make the account of the evidence easily intelligible, it is necessary to have such a previous view of the facts as might enable us to discern the bearings of the promised testimony. We would, therefore, earnestly recommend to you to adopt, as an invariable rule of your practice, the plan of preceding your statement of the evidence with a succinct narrative of the facts and the arguments you found upon them, briefly set forth, and then to proceed to describe the testimony by which, as you are instructed, you will establish those facts.

Let us pause at this point, and consider how your audience is affected; for only by knowing what you *have done* can you understand what remains for you *to do*; and remember always that the purpose of your opening speech is not to display yourself, nor to amuse spectators, nor to exhibit your learning or your wit, *but to inform your Jury*. You have made them acquainted with the history of the case; they now see in their minds (and if they do not see them, your labour is lost, and probably your cause too) the place at which the scene is laid, the parties con-

cerned as principals, each individualised, and they have traced the origin and progress of the difference, and distinctly they perceive what doings or sayings, and by whom, how, and when done or said, have been the immediate occasion of the present suit. Moreover, they perceive the collateral circumstances and persons that have mingled with the principal ones in the course of the transaction, and the surrounding facts which serve to elucidate or illustrate the main one, and the incidents that have been traced, by means of which the fact is to be proved circumstantially, if incapable of being proved directly. The Jury are informed, also, *how it is* that you propose to use these incidental circumstances for the establishment of your case, and the reasons through which they are asked to conclude that the facts were as you assert them to be.

Perhaps the test whether you have done all that you should do previously to describing your testimony may be thus put—"Have you made out such a case by your facts and arguments that, if you prove those facts, and they be unanswered, the Jury would be convinced that your claim or complaint was justly founded, and give you their verdict?"

This accomplished, and not before, you should proceed to state the particular evidence by which you propose to establish the facts you have detailed; and in arranging your statement you will often have this difficulty to encounter; the same witness will sometimes speak to different parts of the



transaction, and the question, no doubt, often occurs to the practitioner, whether it is the better course to deal with the whole testimony of the witness at once and dismiss him, or to confine the statement to so much of it as comes in order of time, and introduce him again when he is wanted. But this often-recurring source of perplexity will be entirely removed by observance of the arrangement above proposed. Having stated, in a narrative form, the whole story intended to be proved, with the arguments founded upon the facts, apart from any particular proposed proofs, and the Jury being thus already in possession of the facts and their mutual bearings, all that now remains for you to do is to introduce to them the *persons* and *documents* by which you hope to establish the case you have already painted upon their minds. You are going to deal now rather with the *witnesses* themselves than with their *evidence*, and the natural and least perplexing course to your audience is to introduce each one in succession, describe him and his whole evidence, and dismiss him; for it is very difficult for the mind, following the rapidity of your speech, to go backward and remember that the personage you are recalling has been already introduced; confusion is apt to be the result, and it is wonderful how small a degree of perplexity cast over a juror's mind, at the close of a case, will envelope as with a fog his previously clear impressions.

By all means, then, take each witness in turn, and dispose of him at once. But in what order

shall the witnesses be taken? In that of time, or in that of importance? Practice varies in this respect. Some Advocates prefer the one, some the other, and some like to disregard both, and keep their most important witness to the last, so that they may end with a flourish, and leave the minds of the Jury at the moment when it is expected that the strongest impression is made upon them. But this appears to us to be a mistake. It is to confound an opening speech with that in defence or in reply. In the latter, it is often desirable to end with the most powerful of one's arguments, because the object is to convince or persuade. But the purpose of an opening speech is simply to *inform*. Nothing is gained, but, on the contrary, a great deal is lost, by stating to the Jury anything you cannot *prove*. They are not *convinced* by your speech, but by the evidence by which you substantiate your statement. You cannot hope to achieve more with the most impressible juryman than to bring him to this: "Well, *if you prove what you say*, you will have my verdict." In accordance with this state of feeling on the part of the jury, your course will be only to describe your testimony in the course in which it will least disturb the order of the story, as it already exists in their minds. You will take them, therefore, in order of time, and shortly repeating that portion of the narrative which is spoken to by the witness you are about to introduce, you should state who and what he is, and the circumstances, if any, that give peculiar value to his testimony, or that enable him to depose to the

particular facts, and then very shortly repeat the facts he will prove. If he speaks also to a subsequent part of the transaction, when you have said all you have to say of the former part, and not before, refer to that latter part with the like introduction and the like brevity.

Thus deal with all your witnesses in turn. But if any of them be *adverse* or *doubtful*, all your discretion and ingenuity will be required in treating of them. It is your business to leave upon the minds of the jury the most favourable impression of the persons upon whom your case depends; and yet you must as carefully avoid such a representation of them as might in the witness-box disappoint your anticipations, for there is always a tendency in a jury to suppose that, if you have been deceived as to one part of your case, or one of your witnesses, you may have been deceived as to the rest; and not only is the influence of the statements and arguments in your opening destroyed, but a prejudice is created against you, which you will find it very difficult afterwards to remove. It is often, perhaps always, the best policy to be candid in your admissions: to open your *doubtful* witnesses as being such; to state to the jury the objections which you are aware will be made to their testimony, and take the opportunity to show also why, upon the whole, it is to be rather received than rejected, or what parts of it may be relied upon, although other parts may be questioned. It is not unfrequently a prudent course boldly to throw overboard some testimony which you can afford to

sacrifice, in order to save the credit of the rest: as when, for instance, a doubtful witness is to be called merely to corroborate, whose presence does not really strengthen your case, but whose absence would be a subject for injurious comment; you thus get rid of a difficulty in your proofs, create a favourable impression of your case, and by anticipating the objections of your opponent, snatch his most effective weapon from his hands. There are few circumstances in which an Advocate's tact is more exhibited than in this exercise of a cautious and yet far-seeing discretion as to the manner of introducing his *adverse* and *doubtful* witnesses into his opening speech, so as to anticipate any damage they might possibly inflict upon him, having thus to steer between dangerous confessions of weakness and exposure of his blots on the one hand, and the still more dangerous concealment of them upon the other, leading often to fatal surprises.

With an *adverse* witness your course is clear. You will point out in the strongest colours the interests that operate upon him, as likely to warp his testimony, not only for the purpose of warning the Jury against placing confidence in any evidence injurious to you which he may give, but also to make doubly influential whatever he may say in your favour.

In concluding your opening, it is rarely prudent to do more than briefly to repeat the outline of your case, and especially so much of it as goes to aggravate damages, winding up by a calm assertion of your confidence that, if you establish the case

you have stated, you will be entitled to their verdict. Anything in the shape of a formal peroration, and especially any display of eloquence at the close of an opening, is out of place and in bad taste, and only permissible in a few exceptional cases, of which it must be left to your discretion at the moment to determine.

### XXXIII.

#### THE EXAMINATION-IN-CHIEF.

THE plaintiff's case being thus stated by the Leader, the examination of the plaintiff's witnesses proceeds. The general rule is for the Counsel on that side to conduct the examination of the witnesses in turn, the Junior taking the first witness, probably because it was supposed that the Leader would require rest after his speech. But this order is sometimes departed from, under special circumstances,—as where the witness is peculiarly important, or his examination demands peculiar skill,—in which cases the Leader will propose to take him, a suggestion to which you should always readily and cheerfully assent; and, indeed, when such a witness chances to fall to your lot, it would be becoming in *you* to propose to your Leader that *he* should call him, and thus to anticipate the delicacy that often prevents a Leader from doing that which may look like a want of confidence in you.

An impression very generally prevails in both branches of the Profession that the Examination-in-chief, equally with the opening of the case, is an easy task, which anybody may perform, and demanding neither ability nor experience. But this is a grave mistake, and the difficulty of the one, as of the other, will be discovered at the first experiment. You probably suppose that you have nothing to do but to take your brief in your hand and carry your witness through his evidence, as it is there set down, turning aside neither to the right hand nor to the left, and, when you have come to the end of the statement on the paper, to resume your seat and leave him to be dealt with by your adversary in cross-examination. But your task is far from being so easy, for, in the first place, you cannot always rely upon the evidence as stated in the brief. The Attorney does not always know what is and what is not admissible evidence, and, if he has a doubt, he prudently states rather than omits, deeming that it may be useful to you for information, although you cannot bring it directly before the Court. The witnesses themselves cannot always be relied upon in their statements made to the Attorney, and upon which the brief is framed. Nothing is more common than to find assertions, most confidently made in the office, retracted in the witness-box, under the sanction of an oath and the fear of cross-examination. Witnesses have so many motives for *stretching* their stories to the Attorney—the love of being important—the desire to be taken to the assizes and *paid* for pleasure trips

—that it is often impossible by any vigilance to keep them to the strict literal truth in their statements given in the office, and unless you are prepared for this kind of disappointment in your examination-in-chief, you will be sorely disconcerted and put to confusion. And here let us warn you against the danger, which inexperience frequently incurs, of being not only disconcerted by the witness failing to support the statements of the brief, but by exhibiting in countenance or manner the disappointment it feels. Let nothing, not even a tone of your voice, betray surprise, or it will assuredly reveal your weakness to your lynx-eyed opponent, who will make good use of the fact to discredit your witness and your cause, by the argument, always powerful, that the witness has told two different stories. And hence the necessity for another rule of examination, *to make as little use as possible of your brief.* You should commit to memory the leading facts to be proved by the witness, or note them in the margin in such a manner that, *as the brief lies upon the table*, your eye may catch in an instant anything you may have forgotten as you go along; but do not hold the brief before you, like a book from which you are reading, or you will inevitably examine the witness as if you were hearing him repeat a catechism he has learned, instead of gathering from him information which *he* possesses but you do *not*. If you read your questions from your brief, you will find it very difficult, whatever the necessity, to depart from the terms or the order there set down. But



if you examine from your memory, or such an outline of the facts as we have suggested, your brief lying upon the table, your whole attention will be given to the witness, your eye to his deportment, your mind to his words, and knowing what you want to have from him, you will be enabled to frame your questions in accordance with what has preceded, and so as to procure the facts you are seeking. It happens frequently that new facts come out in examination, which materially alter the complexion of the case and require a complete remodeling of the entire train of questions, with a view to elicit explanation and to make the whole consistent with your case. Such a position will demand the exercise of all your ingenuity and caution, and it is in such a position that the skill of the accomplished Advocate is discovered, far more than in those oratorical displays which win for him the applause of the public. The Attorney and the Counsel in a cause alone know the real and greatest merits of an Advocate.

You are, of course, acquainted with the first great rule of practice in the examination-in-chief, that you shall not put *leading questions* to your own witness—a leading question being such an one as suggests the answer. This rule is short, simple, and seemingly easy of application; but you will find it to be excessively difficult to be observed in practice, and, indeed, if it were strictly enforced, a trial would be prolonged indefinitely. At the beginning of your practice, having this rule constantly ringing in your ears, from the interruptions

of unpractised juniors trying to appear very clever and very quick, you will be apt to err rather by its too strict observance than by violating it. Nevertheless, as it is often enforced without necessity, merely for the sake of interruption, you must be prepared to cope with its difficulties, and we will endeavour to point out to you the most prominent of them.

But first observe, that the rule against leading questions is properly applicable *only to such questions as relate to the matter at issue*. Whatever some priggish opponent may protest, it is permitted to you, and the Judges will encourage you in the practice, to lead the witness directly up to the point at issue. It saves time and clears the case, and if you narrowly observe experienced Advocates, you will find that they always adopt this course. For instance, instead of putting the introductory questions—"Where do you live?" "What are you?" and so forth, you should, unless there be some special reason to the contrary, directly put the leading question, "Are you a banker carrying on business in Lombard-street?" and so on, until you approach the questionable matter, when, of course, you will proceed to conduct the examination according to the strict rule.

But that rule is not so easily to be observed as you may suppose. Frequently it will occur, that you will have need to call the attention of the witness to something he may have forgotten. As thus:—Suppose that you were examining as to a certain conversation. The witness has narrated

the greater portion of it, but he has omitted a passage which is of importance to you. We know that, in fact, with all of us, in our calmest moments, it is difficult to repeat perfectly the whole of what was said at a certain interview, and if it had been a long one, probably we might repeat it half-a-dozen times, and each time omit a different portion of it, although in either case the omitted part would be instantly recalled to our memories if we were asked, "Did he not also say so and so?" or, "Was not something said about so and so?" But this sort of reminiscent question you are not permitted to put to a witness, because it would be a leading question, although he is far more likely, in his agitation, to forget that he had not repeated the whole than we should be in our calmest moments. In vain you ask him, "Did anything more pass between you?" "Was nothing more said?" "Have you stated all that occurred?" He does not in fact remember precisely what he had stated of it, or the portion you desire to obtain has escaped his memory for the moment. It would flash upon him instantly, if it were to be repeated, or even to be half uttered? But you may not help him so, and then there arises a perplexity, which every Advocate must often have experienced,—in what manner can this be recalled, without leading? Here is another occasion for the exercise of that ready tact in the conduct of an examination-in-chief which marks the skilful Advocate. Your endeavour must now be to suggest indirectly the forgotten statement: and to do so without violating the rule which in this

respect is certainly pushed further than justice and fairness to the infirmity of human memory can sanction. As each case must depend upon its circumstances, it is impossible to lay down any rule to help you, or even to hint at forms of suggestion. But one method we may name, as having proved efficacious when others had failed, and that is, to make the witness *repeat* his account of the interview, or whatever it may be; then it will not unfrequently happen, as we have already observed, that he will remember and repeat the passage you require and omit something else which he had previously stated. But this, of course, matters not; your object has been gained and your adversary may take what advantage he can of the difference in the statements. If the story is a long one, you will avoid inflicting this repetition of it, until other expedients have been tried in vain. It may be added, that a single word often suffices to suggest the whole sentence; if you have a quick wit, you may sometimes bring out the matter you want, by so framing a question that it shall contain a part of the forgotten sentence, *ipsissimis verbis*, but otherwise applied.

Great caution is required in the examination of all your witnesses, after the first, to prevent their disagreement in any important particulars. No error of inexperience or unskilfulness is more common, than to examine a witness *according to the brief*, without reference to the evidence previously given and the requirements of the case, as it stands. If you fear that there may be conflicting

testimony on any point, the first witness having varied from the statement in the brief, it is usually better to leave it as it stands upon that single testimony than to bring out a contradiction; but upon this you must exercise your sagacity at the moment; it must depend upon the particular facts of the case; we only suggest to you, that it is one of the difficulties of examination-in-chief which you should be prepared to encounter. Anticipating it, you will not be taken by surprise when it occurs to you in your practice.

There are two kinds of troublesome witnesses whom you will have to encounter in the conduct of a cause—those who say too much, and those who say too little: your too eager friends, and your secret enemies. Of these, by far the most difficult to deal with are your over-zealous friends—your witnesses who *prove too much*. A very little experience will enable you to detect these personages almost at a glance, certainly after a few sentences. They usually try to look wonderfully easy and confident; answer off-hand, with extraordinary glibness, and give you twice as much information as you have asked for. Now, another rule of evidence is, that *you shall not discredit your own witness*, so that your only chance of dealing with these troublesome friends is to check them at the very outset, by kindly, but gravely and peremptorily, requiring them to do no more than simply to answer the questions you may put to them, and then so to frame your questions that the answer shall be a plain “Yes” or “No,” giving no opportunity for

expatiating. Keep such witnesses closely to the point for which they are required, and having got from them just what you want, dismiss them, right thankful if they have not done you more harm than good.

There is no more difficult and delicate task in the conduct of an examination-in-chief than so skilfully to manage an *adverse* witness, called by yourself, that he shall state just so much as you require and no more.

When the Court is satisfied that the witness is really an adverse one, the strict rule that forbids leading questions will be relaxed, and you will be permitted to conduct the examination somewhat more after the manner of a cross-examination; But this is only a partial licence. You may put leading questions, but you may not discredit him, whatever may have been the damage done to you by his testimony, and however obvious the *animus* which has misrepresented the facts purposely for the injury of your cause. He is still *your* witness, and having chosen to call him, and thereby to ask the Jury to believe his story, it is not competent to you to turn round, when you find he does not suit your purpose, and endeavour to show to the Jury that he is unworthy of credit. Between this *Scylla and Charybdis* lies your difficult course in dealing with such a witness.

As a general rule, it may be taken that the less you say to him the better for you. Bring him directly to the point which he is called to prove; frame your questions so that they shall afford the

least possible room for evasion or, what is still worse, *explanation*. Avail yourself of your liberty to lead, as soon as you can—that is, as soon as you have laid the foundation for it by showing from his manner that the witness is really adverse. Make no secret of his enmity; on the contrary, you have most to dread when his manner and tone do *not* discover his feelings. If you are satisfied *beyond doubt* of his hostility, and he should, as is often seen, assume a frank and friendly mien in the witness-box, instead of accepting his approaches, reject them with indignation; let him see that you understand him, and are not to be imposed upon, and endeavour to *provoke* him to the exhibition of his *true* feelings. The importance of so doing will be obvious to you when you remember that it is essential to the safety of your cause that the Jury should receive his testimony with a knowledge of the circumstances under which it is given, so that anything adverse to you which may fall from him shall be accepted by them with the allowance which is always made by reasonable men for the exaggerations, or even inventions, of an enemy; for, to an audience so prepared, whatever falls from him in your favour will have double value given to it, and whatever he may say that tells against you will be rejected. Hence it is the first care of a skilful Advocate, in dealing with his own adverse witness, not only *not to conceal* the hostility, but to make it prominent—to provoke it to an open display, and *draw out* the expression of the feeling, if it does not sufficiently appear without a stimulus. If he

be adverse at all, *you cannot make him appear too adverse*, because, the more hostile he is, the more will his evidence in your favour be esteemed, and the less weight will be given to such as he may utter against you.

If your witness be timid, it will be your care to restore his self-possession before you take him to the material part of his testimony. This you should effect by assuming a cheerful and friendly manner and tone, and if you have the art to make him smile, your wit would be better timed than is always the case with forensic jests. Keep him thus employed upon the fringe of the case, until you are satisfied that his courage is restored, and then you may proceed with him as with any other witness. But be very careful not to take him to material topics while he is under the influence of fear, for in this state a witness is apt to become confused, and to contradict himself, and so to afford to your adversary a theme for damaging comment.

A stupid witness is often more troublesome than an adverse one. He cannot understand your questions, or answers them so imperfectly that he had better have left them unanswered. With such an one the only resource is patience and good temper. If you are cross with him, you will be sure to increase his stupidity, and to convert evidence that means nothing into evidence that is contradictory and confused. The preservation of imperturbable good temper is a golden rule with an Advocate. He should never be moved to anger



by anything, however provoking, and however he may *appear* to be in a passion. Entire self-command is his greatest virtue, never more in requisition than in dealing with a *stupid* witness. Instead of rebuking him, you should encourage him by a look and expression of approval, and you must frame your question in another shape, better suited to his dense faculties. If baffled again, do not retreat, but renew the catechism until your object is obtained. In constructing your questions, you will often find a clue to his links of thought by observing his answers, and your next question might then, with a little ingenuity, be so framed as to fall in with his train of ideas. Thus patiently treated, there are few witnesses so dull as not to be made efficient for the purpose of an examination-in-chief. ✓

In this, as in opening your case to the Jury, it is the better course to observe the order of *time*. That is not only the most easily intelligible to the Jury, but it is the natural order in which events are associated in the mind of the witness, and, therefore, *by* which they are the most readily and accurately recalled. If you depart from this for the sake of bringing out facts that are connected together by some other link than time, as, for instance, to exhibit in its entirety one branch of your case, let the same principle govern the order of that, and then return to the original plan. But it will not do to revert to the precise point where you quitted it; you should repeat the two or three questions with which you concluded, so as to recal

your witness to the point from which you had diverted him. Inattention to this simple rule is often the occasion of no small perplexity to the witness, and it is scarcely necessary to warn you against *that*, of which advantage is certain to be taken to damage your case.

Your manner in examination-in-chief should be very different from that which you have in cross-examination. You are dealing with your own witness, whom you assume to be friendly to you, unless informed to the contrary, when it is permitted to you to take the tone already described. You must encourage him, if he be timid, and win his confidence by a look and voice of friendliness. It often happens that witnesses, unaccustomed to courts of justice, are so alarmed at their formidable aspect, and at their own new position, that in their confusion they cannot at first distinguish between the friendly and the adverse Counsel, and they treat you as an enemy to be kept at bay and to whom they are to impart as little as possible. It is then your care to set your witness right, and a kindly smile will often succeed in doing this. Do not appear to notice his embarrassment, for that is sure to increase it, but remove it quietly and imperceptibly by pleasant looks, friendly tones, and words that have not the stern sound of a catechism, but the familiar request of a companion to impart a story which the querist is anxious to hear, and the other gratified to tell. The most frightened witness may thus be drawn almost unconsciously into a narrative which, when he

entered the witness-box, had escaped his memory in his terror.

Your questions in examination-in-chief should be framed carefully, and put deliberately. You never require in this that rapid fire of questions which, as we shall have occasion to show hereafter, is so often requisite in cross-examination. Nor in this have you need to put an immaterial question, save under the rare circumstances previously described. You should weigh every question in your mind before you put it, in order that it may be so framed as to bring out in answer just so much as you desire, and no more. You have time for this, if you are as quick of thought as an Advocate should be, while the Judge is taking his note of the previous answer; but even if this be not sufficient for your purpose, you must not fear to make a deliberative pause. The Court will soon learn not to be impatient of your seeming slowness, when it discovers that you have, in fact, abbreviated the work by a pause which has enabled you to keep the evidence strictly to the point at issue. They who remember Sir William Follett will at once understand our meaning, for one of his most remarkable and impressive peculiarities was the grave and thoughtful deliberation with which he framed and put his questions to his own witnesses, and the result of which was, that he was seldom annoyed by unexpected answers, or by additions and explanations which he did not desire.

Sometimes it demands considerable discretion to

determine whether it is better to permit the witness to tell his own story in his own way, or to take him through it by questions. No rule can be laid down for this; it must depend upon your discernment at the moment. There is a class of minds which can only recal facts by recalling all the associated circumstances, however irrelevant: they must repeat the whole of a long dialogue, and describe the most trivial occurrences of the time, in order to arrive at any particular part of the transaction. With such you have no help for it but to let them have their own way. It is the result of a peculiar mental constitution, and endeavours to disturb his trains of association will only produce inextricable confusion in the ideas of the witness, and you will be further than ever from arriving at your object. But if you are dealing with that other class of witnesses, happily more rare, who appear to have *no* trains of thought at all, who can observe *no* order of events, whose ideas are confused as to time, place and person, your only chance of extracting anything to your purpose is to begin by requesting that they would simply answer your questions, and, falling in, as it were, with their own mental condition, proceed to interrogate them after their own fashion, with *disconnected questions*, and so endeavouring to draw out of them isolated facts, which you will afterwards connect together in your reply, or which may dovetail with the rest of the evidence, so as to form a complete story.

This plan will often be found effective with such witnesses, when all the usual methods of eliciting

a narrative from them have been abandoned in despair. Of course, it demands great tact and readiness; but it is presumed that, unless you possess these qualities, you will not attempt to become an Advocate.

It is, perhaps, almost an impertinence to tell you that you are by no means bound to call the witnesses in the order in which they are placed in the brief. It will be your task, when reading and noting up your case, to marshal your witnesses in the order in which they will best support your case, as you have determined to submit it to the jury. But, inasmuch as you are not allowed to recall your witnesses, except with special permission of the court, given only under special circumstances, and you are, therefore, compelled to elicit all that you require in order to support any part of your case, where the same witness speaks to different parts of it, you must take care in his examination to separate his testimony, as it relates to each of such parts, and even at the expense of some repetition to take him through his evidence, as it bears upon one part, before you take him to another, observing, however, the rules as to time and the manner of reverting to the former portion of the narrative, which have been previously described.

While the examination-in-chief is proceeding, it will be the duty of the counsel on the other side to give the most attentive ear to every question and every answer, and to take a note of it upon his brief. When this duty devolves upon you, it may,

perhaps, be performed all the more satisfactorily by the observance of some rules which experience has approved.

You must mark every question put to the witness, with a double purpose; first, to be sure that it is properly put, according to the rules of evidence; and, secondly, to ascertain what is its bearing upon the case, and the design of your adversary in putting it.

Immense keenness of perception and readiness of apprehension are requisite to the proper performance of this task. You will need to have the law of evidence at your fingers' ends, that, if the question be an improper one, you may interpose instantly, *before the answer is given*, to forbid the witness to reply, and then not only to make your objection to the Court, but to support it by *reasons*..

And here let us warn you against a fault into which young Advocates are especially apt to fall—that of making too frequent and too frivolous objections. Many inexperienced men appear to think that, by continually carping at the questions put to the witnesses by the other side, they are proving to the audience how quick and clever they are. But this is a mistake. Such an exhibition of captiousness, whether affected or real, is offensive to the Court and to the jury; it displeases the Attorneys, *who see through it*, and only deem you an ass for your pains, and it can impose only upon the mob in the gallery, whose applause, however desirable in politics, is rather injurious than other-

wise to a *professional* reputation. Nothing is more easy than to find opportunities for this sort of vanity, without starting objections actually untenable, because in practice, and by the courtesy of Advocates, and the honourable understanding they have one with another that they will not knowingly put leading questions where it would be *wrong* to lead, a vast number of questions *are* put which, in strictness of the rule, are leading, and, therefore, if objected to, could not be permitted. But it will be your proper course *never* to object to a question, as leading, *merely because it is such*, but only when it appears to you to be likely to have an effect injurious to your cause. And when you have real occasion to make such an objection, do it not in a perked, angry, and conceited manner, as is sometimes seen, but good-temperedly, and as appealing to the better judgment of your opponent, whether he does not deem it to be an improper question; nor address the objection to the Court in the first instance, but to your adversary, and only if he persist in putting it should you call upon the Court to decide between you which is right.

But it is not alone against improper leading questions you must be upon the watch; there are many others, still more objectionable, which it will be your duty to prevent by an instant objection. As soon as the words have fallen from your opponent's lips, and before the witness can have time to answer, you must interpose, first, with an exclamation to the witness, "Don't answer that," and then turning

to the Court, state what is your objection to the question, with your reasons for it. Your opponent will answer you, if he can. Then you will have the right of replying to him, and the Court will decide between you.

There is, perhaps, no part of the difficult business of an Advocate in which the fruits of experience are more obvious than in this. If you watch closely the examinations of the witnesses, in a trial where an experienced Advocate is on the one side and an inexperienced one on the other, you will see the *practised* man putting question after question, and eliciting facts most damaging to the other side, which his adversary might have shut out by a prompt objection to them, but which he permits to pass without protest, because he is not sufficiently experienced in the Law of Evidence to discern their illegality on the instant, or so much master of it as to give a reason for objection, even though he may have a sort of dim sense that the questions are wrong somehow, and he fumes and is fussy upon frivolous protests against leading questions, while he permits illegal questions, destructive to his client, to be put without a murmur. On the other hand, when it comes to his turn to examine his witnesses, and on the experienced man devolves the duty of watching, you will see how, in no single instance, is *he* suffered to tread over the traces, but the strictest rules of evidence are enforced upon him, so that he sits down, leaving half his case undeveloped to the Jury, while his adversary has brought out all that *he* had desired to impress



upon the Court, *his* case having been as bald, in fact, as that of the other.

Hence it is that we have endeavoured to impress upon the Student, aspiring to be an Advocate, the vital importance of a mastery of the Law of Evidence, as the branch of law which is not only most frequently in requisition by him, but the only one which he is called upon to propound without previous research. Almost all other subjects are notified to him before he goes into Court, so that he may look into the law and prepare himself for the argument; or if, as rarely happens, he is suddenly called upon, the Court will always give time for research, or, at the least, allowance is made for an insufficiency common to his audience, even to the Judge upon the Bench. But, in questions of evidence, no such delay is practicable, and no such excuse is accepted. They necessarily arise on a sudden, and must be suddenly argued and decided. An Advocate is expected to be aware of this, and to come prepared with a knowledge of all the principles and rules of evidence. In order to this, it is necessary to *keep up* his acquaintance with it, by continually refreshing his memory, not only by reading every day a portion of his favourite text-book, but by carefully reading, and then noting up in that text-book, which should be interleaved for the purpose, every case decided upon the Law of Evidence, from week to week, as the Reports issue; and it is of the extremest importance that he should possess the *very latest* decisions, for they will not unfrequently give him

a victory over an adversary not so well prepared as himself with the *latest cases*.

While we are upon this subject, it may be convenient to add, that there is another class of cases of which an Advocate should be careful to procure the earliest intelligence, and should note with equal care in his book of practice; namely, such as may, perhaps, be best described under the collective title of "the Practice of *Nisi Prius*." We mean, by this, cases equally in sudden requisition with those on evidence, for determining the conduct of a trial; as the right to begin, stamps, notices, juries, and verdicts, the measure of damages, bills of exception, &c. Many a victory has been won solely by the superior diligence of an Advocate in thus possessing himself of the most recent decisions on cases of this class.

Your notes of the evidence, as it proceeds, should be fully taken, because you cannot anticipate, at this period of the cause, what portions of it may prove to be material, nor where a question may arise as to what was the witness's answer. In taking these notes, you begin with the day and date on which the trial took place, and the name of the Judge. You then very briefly note the more important points of the opening speech, especially such as you purpose to answer, and you indicate such as will require peculiar attention by scoring it twice or thrice. Then, stating the name of the witness and the Counsel by whom he is examined, you set down his evidence, leaving a broad margin for your own observations, if any should occur to you. It

is not necessary to give both question and answer, save where the question strikes you as one of special import, or to which you might desire to refer thereafter, it will suffice merely to give the answer in the witness's own words, as nearly as you can observe them, so as to make them intelligible. Thus, if the witness be asked, "Were you at Exeter on Saturday?" and answers, "I was,"—a leading question, but probably not worth objecting to,—you set it down thus: "Was at Exeter on Saturday." But let it be a rule with you, so far as it is practicable, always to take the *very words* used by the witness. As you proceed, you will find that the evidence suggests to you matter to be explained on cross-examination, or to be answered in your speech for the defence, or to be contradicted by your own witness. Here it is that you will find the margin useful. When such an idea occurs to you, never suffer it to escape, trusting to recall it when it is wanted, for, amid the multiplicity of claims upon your attention, you cannot be assured that it will return; but grasp it instantly, and in the margin, against the evidence that is so to be treated, set some mark which may catch your eye, and if the words are not likely to suggest the thought you desire to recall, you can, in a hurried sentence, insert there that of which you wish to be reminded. This plan is especially useful for the purpose of cross-examination, for it is extremely difficult to carry in the mind all of the 'evidence-in-chief' that needs to be explained or deprived of its credit; but, with this scored and

noted report of the witness's testimony before you, it is unlikely that anything of moment will escape your attention.

Another duty may devolve upon you, as Advocate for the defendant, which will properly come to be noticed here,—that is, the examination on the *voir dire*. This legal phrase means merely, the examination to which a witness may be subjected, before he is admitted, for the purpose of ascertaining if he is competent to be a witness. This is now much less frequently seen than formerly, because it has been the wise policy of recent legislation to remove the disqualifications of witnesses; but a few yet remain, and until these are also swept away, in obedience to the same rational principle, you must not forget that there *are* objections to competency yet lingering in our law, and that it will be your duty to enforce them where you are instructed that they exist. When, therefore, a witness is called, you must be prepared, if you have an objection to him, to state it *immediately on his appearance*, and having intimated to the Court that you have such an objection, *you* will proceed to examine him in support of it. This examination you will be permitted to conduct as in the nature of a cross-examination. Very few questions usually suffice; but, if you are dealing with a very acute witness, who knows your object, and especially with a Professional one, no common skill and tact are often required in order to drag out of him the particular circumstances upon which you rely to sustain your objection. The same rules are

applicable to this as to cross-examinations, upon which we shall comment presently, and therefore it is unnecessary to say more about it in this place.

These are all the duties that occur to us as likely to be required of you, as Advocate for the defendant, during the progress of the examination-in-chief of the plaintiff's witnesses. We shall next proceed to consider what *you* should do in the conduct of your cross-examinations.

## XXXIV.

### CROSS-EXAMINATION.

CROSS-EXAMINATION is commonly esteemed the severest test of an Advocate's skill, and perhaps it demands, beyond any other of his duties, the exercise of his *ingenuity*. But those who have had experience will be inclined to doubt whether, upon the whole, it is so difficult to do *well* as an examination-in-chief, and certain it is that it is more frequently seen to be well done, although this may not improbably result from the prevalent notion that examination-in-chief is an easy matter, which any body can do, while cross-examination is extremely difficult, and therefore that Advocates, and especially *young* Advocates, perform the one carelessly, while they put forth all their powers for the accomplishment of the other. Do not understand, however, that we are in any degree unconscious of the difficulty of conducting a cross-examination with creditable skill. It is undoubtedly a

great *intellectual* effort; it is the direct conflict of mind with mind; it demands, not merely much knowledge of the human mind, its faculties, and their *modus operandi*, to be learned only by reading, reflection and observation, but much experience of man and his motives, as derived from intercourse with various classes and many persons, and, above all, by that practical experience in the art of dealing with witnesses which is more worth than all other knowledge; which other knowledge will materially assist, but without which no amount of study will suffice to accomplish an Advocate. To the onlooker, a cross-examination has much more of interest, for it is more in the nature of a combat, with the excitement that always attends a combat of any kind, physical or intellectual; it is man against man, mind wrestling with mind. But, in examination-in-chief, the Advocate and his witness have the appearance, at least, of being allies, and whatever skill the former is required to exercise for the attainment of his object needs to be concealed, and is seldom apparent to a mere spectator, however it may be recognised and appreciated by those who are engaged with him in the cause, and who know with what exquisite tact he has elicited just what he desired, and suppressed that which he wanted not to reveal.

There are two *styles* of cross-examination, both of which you may see exemplified in any court where you may chance to spend a day, and which we may term the *savage* style, and the *smiling* style. The aim of the savage style is to *terrify* the witness

into telling the truth; the aim of the smiling style is to *win* him to a confession. The former is by far the most frequently in use, especially by young Advocates, who probably imagine that a frown and a fierce voice are proofs of power. Great is their mistake. The passions rouse the passions. Anger, real or assumed, kindles anger. An attack stimulates to defiance. By showing suspicion of a witness, you insult his self-love—you make him your enemy at once—you arm his resolution to resist you—to defy you—to tell you no more than he is obliged to tell—to defeat you, if he can. Undoubtedly there are cases where such a tone is called for; where it is politic as well as just; but they are *rare*, so rare that they should be deemed entirely exceptional. In every part of an Advocate's career, good temper and self-command are essential qualifications; but in none more so than in the practice of cross-examination. It is marvellous how much may be accomplished with the most difficult witnesses simply by good humour and a smile; a *tone* of friendliness will often succeed in obtaining a reply which has been obstinately denied to a surly aspect and a threatening or reproachful voice. As a general rule, subject to such very rare exceptions as scarcely to enter into your calculations, you should begin your cross-examination with an encouraging look, and manner, and phrase. Remember that the witness knows you to be *on the other side*; he is prepared to deal with you as an enemy; he anticipates a badgering; he thinks you are going to trip him up, if you can; he has, to



more or less extent, girded himself for the strife. It is amusing to mark the instant change in the demeanour of most witnesses, when their own Counsel has resumed his seat and the Advocate on the other side rises to cross-examine. The position, the countenance, plainly show what is passing in the mind. Either there is fear, or, more often, defiance. If you look fierce and speak sternly, it is just what had been expected, and you are met by corresponding acts of self-defence. But if, instead of this, you wear a pleasant smile, speak in a kindly tone, use the language of a friendly questioner, appear to give him credit for a desire to tell the whole truth and nothing but the truth, you surprise, you disarm, him: it was not what he had anticipated; he was prepared to resist an open enemy, but not to combat a friend; he hesitates what to do, how to treat you; the fortress is surrendered, he submits, and answers frankly to your questionings.

But where shall you begin? What order shall you follow? Shall you carry him again through the narrative given in his examination-in-chief, or begin at the end of it and go backwards, or dodge him about, now here, now there, without method?

Each of these plans has its advantages, and perhaps each should be adopted, according to the special circumstances of the particular case.

But you cannot determine which course to adopt unless you have some definite design in the questions you are about to put. A mere aimless, haphazard cross-examination, however frequently occurring, is a fault which the young Advocate

should most strenuously guard against. It is far better to say nothing than to risk the consequence of random shots, which may as often wound your friends as your opponents. Very little experience in Civil or Criminal Courts, and in the latter especially, will assure you that there is no error so common as this. Some persons seem to suppose that their credit is concerned in getting up a cross-examination, and they look upon the dismissal of a witness without it, as if it were an opportunity lost, and they fear that clients will attribute it, not so much to prudence as to conscious incapacity. So they rise and put a number of questions that do not concern the issue, and perhaps elicit something more damaging to their own cause than anything the other side has brought out, and the result is, that they leave their case in a far worse condition than before. Let it be a rule with you *never to cross-examine unless you have some distinct object to gain by it*. Far better be mute through the whole trial, dismissing every witness without a word, than, for the mere sake of *appearances*, to ply him with questions that are not the result of *a purpose*. You will not fall in the estimation of those on whom your fortunes will depend; but the contrary. The Attorneys well know, that in legal conflicts, even more than in military ones, discretion is the better part of valour; they will not mistake the motive of your silence, but they will commend the prudence whose wisdom is proved by the results.

Your first resolve will, therefore, be, *whether you should cross-examine at all*.

It is impossible to prescribe any rules to guide you in this, so much must depend upon the particular circumstances of each case. You must rely upon your own sagacity, on a hasty review of what the witness has said, how his testimony has affected your case, and what probability there is of your weakening it. If he has said nothing material, it is usually the safer course to let him go down, unless, indeed, *you are instructed* that he can give some testimony in your favour or damaging to the party who has called him, and then you should proceed to draw *that* out of him, if you can. But unless you are so *instructed*, you should not, on some mere vague suspicions of your own, or in hope of hitting a blot somewhere by accident, incur the hazard of detaining him and eliciting something that may damage you,—a result to be seen every day in our courts. So, as a general rule, it is dangerous to cross-examine witnesses called for mere formalities, as to prove signatures, attestations, copies, and such like. Still, such witnesses are not to be immediately dismissed, for you should first consider if there be any similar parts of your case which they may prove, so as to save a witness to you, and then you should carefully confine yourself to the purpose for which you have detained them.

In resolving whether or not to cross-examine a witness, it is necessary to remember that there can be but *three* objects in cross-examination. It is designed either to destroy or weaken the force of the evidence the witness has already given *against* you, or to elicit something in *your favour*, which

he has not stated, or to discredit him, by showing to the Jury, from his past history or present demeanour, that he is unworthy of belief. Never should you enter upon a cross-examination without having a clear purpose to pursue one or all of these objects. If you have not such, keep your seat.

Let us consider each of these objects of cross-examination separately.

1st. *To destroy or weaken the force of his testimony in favour of the other side.* If this be your design, you can attain it only by one of two processes. You must show from the witness's own lips, either that what he has stated is *false*, or that it is capable of *explanation*. If your opinion be that he is honest, but prejudiced; that he is mistaken; that he ~~has~~ formed a too hasty judgment and so forth, your bearing towards him cannot be too gentle, kind, and conciliatory. Approach him with a smile, encourage him with a cheering word, assure him that you are satisfied that he intends to tell the truth, and the whole truth, and having thus won his good will and confidence, proceed slowly, quietly, and in a tone as *conversational* as possible, to your object. Do not approach it too suddenly, or you will chance to frighten him with that which forms the greatest impediment to the discovery of the truth from witnesses, *the dread of appearing to contradict themselves*. If once this alarm be kindled, it is extremely difficult to procure plain, unequivocal answers. The witness forthwith places himself *on the defensive*, and, deeming you an enemy, fences you, with more or less of skill,

certainly, but always to the weakening of whatever may drop from him in *your* favour. With *such* a witness, of whose *candour* you are seeking to avail yourself, the better course is to begin with the beginning of the story he has told, and conduct him through it again in the same order, only introducing at the right places the questions which are intended to explain or qualify what he has stated in his examination-in-chief. The advantage of this course consists in its avoidance of any appearance of a surprise upon him. You take him into his former track—you even make him repeat a portion of what he has said before—you recall his mind from the Court and from yourself to the subject with which it is familiar. The scene is again before him, occupying his thoughts. *Then*, it is easy to try him upon the details (but still gently), to suggest whether it may not have differed by so and so from that which he has described, or if so and so (which gives to the transaction another complexion) did not occur also, and thus, at more or less length, according to the circumstances of the case.

And here, at the very outset, let us warn you against exhibiting any kind of *emotion* during cross-examination; especially to avoid the slightest show of exultation when the witness answers to your sagacious touch, and reveals what he had intended to conceal. It startles him into self-command and closes the portal of his mind against you more resolutely than ever. You have put him upon his guard and defeated yourself. Let the most important answer *appear* to be received as

calmly and unconsciously as if it were the most trivial of gossip.

In the same manner you may carry him to the conclusion of his story, and what with an explanation of one fact, an addition to another, and a *toning down* of the colour of the whole, the evidence will usually appear in a very different aspect, after a judicious cross-examination, from that which it wore at the close of the examination-in-chief.

Thus you should deal with a witness whom you believe to be truthful, and therefore from whom you propose only to elicit *explanations* and facts in your favour, which his own Counsel has not, of course, assisted him to disclose.

If you suspect that some of the statements of the witnesses are ~~false~~ in fact, although not *wilfully* mis-stated,—errors of the senses, of the imagination, of the memory,—so much more frequent than they might suppose, whose occupation it had not been to sift and weigh the worth of evidence,—your task becomes a very difficult one; for without in any manner charging him with perjury or desiring to have it understood that you do otherwise than believe him to be an honest witness, you have to prevail upon him to confess that which will wear the *aspect* of falsehood. Now, there is nothing upon which witnesses of every grade of rank and intellect are so sensitive as *self-contradiction*. They suspect your purpose instantly, and the dread of being made to appear as lying, while often producing contradictions and evasions, more often arms the resolution of the witness to adhere to his

original statement without qualification or explanation. When, therefore, it is your purpose to show from the witness's own lips that he was *mistaken*, the extremest caution is required in approaching him. You must wear an open brow and assume a kindly tone. Let there be no *sound of suspicion* in your language. Intimate to him delicately your confidence that he is sincerely desirous of telling the truth and the whole truth. Be careful not to frighten him by point-blank questions that go at once to involve him in a contradiction, or he will see your design and thwart it by a resolute adhesion to his first assertion. You must approach the object under cover, opening with some questions that relate to another matter, and then gradually coming round to the desired point. And even when you have neared it you must endeavour, by every device your ingenuity can suggest, to avoid the direct question, the answer to which necessarily and obviously involves the contradiction. The safer and surer course is to bring out the discrepancy by inference, that is, instead of seeking to make the witness *unsay* what he has said, it should be your aim to elicit a statement which may be shown by argument to be inconsistent with the former statement.

But it must be understood that, in all this, your only purpose should be, to ascertain the very truth—to trace an error, if it exists—to try the memory of the witness, if it be trustworthy. *Never* should you seek to *entrap* him into a *falsehood*, or, by your art, to throw him into perplexity, with a design to

discredit him, if, in your own mind, you believe that he is not only honest, but that he has not erred. Your duty as an Advocate is strictly limited by the rules of morality. It is no more permissible for you to tamper with the truth in others, or tempt them to confound or conceal it, than to be false yourself. The art we have endeavoured to describe, as to be practised in cross-examination, is to be used only when you *really* believe that the witness has *not* told the very truth, and it is your honest purpose to elicit it.

An *explanation* of the statements of a witness is not so difficult to be procured from him as is a contradiction; because there is not the same formidable fear of being presented to the Court in the *aspect* of one who is perjured. A witness who is conscious that he has been induced, by the encouraging examination of his own counsel, to say too much, is often ready to seize the opportunity afforded by cross-examination to modify his assertions by qualifications and explanations. If you see this tendency, which is usually shown at the beginning, you have only to encourage it by falling in with his mood, and carefully avoiding anything calculated to make him fear the use to which you may put his admissions. If there be no such tendency, then your course will be the reverse of that to be pursued when you are seeking for contradictions. Instead of avoiding the point, you should go at once to that part of the evidence, repeat the very question, and when you have received the same reply, follow it with a series of



questions as to the circumstances which, as you are instructed, go to modify or explain the statements you are combating. If you are satisfied that the witness is honest and truthful, you cannot put your questions too plainly; let them be as *leading* as you can frame them, naming the fact, and in such a form that the answer shall be a plain "Yes," or "No." And here let us warn you to be cautious not to press your inquiries too far. Having obtained enough for your purpose, pass on. You may obtain *too much*. There is no more useful faculty in the practice of an Advocate than to know *when he has done enough*. Many more causes are lost by saying too much than by not saying sufficient. A chapter may not uselessly be devoted hereafter to the inquiry—*When to sit down?*

The *second* object of cross-examination is *to elicit something in your favour*. The method of doing this will depend upon the character of the witness. If you believe him to be honest and truthful, you may proceed directly to the subject-matter of your inquiry, with plain, point-blank questions. If you suspect that he will not readily state what he is aware will operate in your favour and against his own friends, you must approach him with some of the precautions requisite for the cross-examination of a witness who is not altogether trustworthy. But this distinction in the circumstances is to be observed. Here you are dealing with a witness from whom it is your intent to procure some evidence in your favour. You cannot discredit him, by showing him to be unworthy of belief,

without losing the advantage of his testimony on your own behalf. Therefore, you cannot venture to prove him by questions that might lead to contradictions. How, then, may you attain your end?

You can only do so by gradual approaches. The plain, direct questions, which best elicit the truth from the witness desirous of telling the whole truth, and nothing but the truth, would operate as a signal for silence to a witness who desires to suppress some of the truth. With such an one the surest course is to conduct him to the end by almost imperceptible degrees. Elicit one small fact, perhaps but remotely connected with the main object of your inquiry. He may not see the chain of connection, and will answer *that* question freely; or deem it not worth evading. A very small admission usually requires another to confirm or explain it. Having said so much, the witness cannot stop there; he *must* go on, in self-defence, and thus, by judicious approaches, you bring him to the main point. Even if then he should turn upon you, and say no more, you will have done enough to satisfy the Jury that his silence is as significant as would have been his confession.

It may be remarked here that good generalship may be often shown in skilfully availing yourself of *the silence* of a witness. A refusal to answer, or an evasion of your question, will frequently be more serviceable to you than his words. On such occasions, when assured of the advantage with which you can employ, in your argument to the Jury, that

reluctance to reply, you will not continue to urge him, after having plied him fairly; but having done enough to satisfy the Court that he *can* say something more, if he pleases, you should withdraw, and then you may suggest such inferences from his silence as may be most advantageous to your cause. It is one of the most frequent and fatal faults of young Advocates that they *will have* an answer *in words* to *every* question they put, forgetting that the answer may be injurious, while the silence may be more than suggestive of all that it is their design to elicit.

The most cautious cross-examination will not always prevent that most disagreeable of incidents to an Advocate, the receipt of an answer that tells strongly against him, when he is anticipating an answer in his favour. When such a *contretemps* occurs, it is most important that *you* should not appear to be taken by surprise. Let neither countenance, nor tone of voice, nor expression of annoyance, show to the spectators that you are conscious of being taken aback. If they laugh, be not vexed; if others exhibit surprise, be as calm and appear as satisfied as if *you* had expected it. Thus you will repel the force of the blow, for, seeing that you are not perplexed by it, the audience begin to suppose it not to be so important as they deemed it to be, or they give you credit for some profounder purpose than is apparent, or that you are prepared with a contradiction, or an explanation. Sometimes, indeed, where the blow has been more than usually staggering, it may not be bad policy

to weaken its force by openly making light of it, repeating it, taking a note of it, or appending a joke to it. At no time is self-command more requisite to an Advocate than at such a moment, and never is the contrast between experience and inexperience, the prudent and the injudicious, more palpably exhibited.

The *third* object of cross-examination is to *discredit* the witness, and it will be necessary to preface the hints we venture to offer to you upon the aptest methods of doing this, with a few remarks upon *the principle* that should guide you in the adoption or rejection of this expedient; for it is one upon which there exists somewhat too vague and indefinite an understanding, not merely in the Profession, but with the general public, the former erring on the side of laxity, and the latter on that of strictness; the one being influenced by the feelings of an Advocate, the other by the sympathies of a witness. Upon so important a matter it must surely be possible to ascertain some rules which may help to determine the limits of an Advocate's *duty*, in an endeavour to *discredit* a witness by cross-examination. Let us try to trace them.

In this, as in all other questions of right and wrong, it is necessary to go back beyond the point immediately at issue, to consider the circumstances out of which it has arisen. In matters of *duty* and *propriety*, it is most dangerous to introduce refined distinctions, and to seek to justify, by ingenious argument, that which presents itself to the unbiassed

and unreflecting conscience as wrong. We may fairly doubt the correctness of any proceeding in a matter of morals which needs an argument for its justification. We cannot, therefore, assent to the conclusions, which have been so elaborately wrought out by Lord Brougham and others, as to the duty of an Advocate—conclusions opposed to the plainest dictates of morality, which forbid us to do an injury to our neighbours, or to lie for any purpose whatever, and which are equally binding upon us, whether we are merely acting and speaking for another or upon our own account. We believe sincerely that the character and credit of the Profession would be infinitely raised in public esteem if these broad landmarks of morality were more strictly observed in the practice of Advocacy, and we are *sure* that in the long run it would be profitable to our clients. For if, by arts, ingenious but wrong, by confusing the honest, browbeating the timid, and putting false constructions upon the words of a witness, a verdict may be stolen now and then, the benefit of such rare triumphs is more than counterbalanced by the *mistrust* which a departure from candour and fairness, and a resort to *arts* for concealing or disguising the truth, invariably sows in the mind of the Court and of the Jury, inclining them to look with suspicion upon everything the unscrupulous Advocate says and does, and at length to see in him a trickster always, and to deny to him the credit of frankness and truth-telling, even when he is dealing honestly with them. Who that has addressed juries many

times can fail to have seen the incredulous smile that curls upon their lips, and the sort of stern resolve that settles upon their countenances, as if they would say—"We are not going to be bamboozled by you." It is not too much to say, that owing to the reputation which some unscrupulous Advocates have earned for the whole body of us, the *prima facie* impression of a Jury is almost invariably against the Counsel who rises to address them, and that he has to *disabuse* their minds of this prejudice, by impressing them with *his own truthfulness*, before he can obtain from them a fair consideration of his argument. But, in justice to our order, it must be admitted that there is now far less cause for this mistrust than there used to be. Advocacy has, in this respect, vastly improved of late years, and is still improving. Bullying and browbeating are as rare now as they were common formerly. It is seldom, indeed, that unscrupulous assertions and daring misrepresentations of evidence are indulged. The standard of morality has been advanced among us, and is advancing; and it should be your solemn purpose and earnest endeavour not to suffer it to retrograde in your person, but, by beginning with a stern resolve to maintain the loftiest principles of professional virtue, whatever the temptations to the contrary (and they will be many and formidable), to prove by your example that greatness and success as *an Advocate* are not only compatible with the strictest integrity as *a Man*, but that henceforward these shall be the *only* paths to prosperity and honour. When they are

seen to bring briefs into the bag, they will not be slow of adoption by those who may have thriven by a different course. Whatever it may once have been, be assured that the day is passing, if it have not passed, when a *tricky* Advocate was popular with clients; and one reason of this is, that the law itself has become less tricky; a cause depends more upon its merits and less upon quibbles, and therefore its Advocates must take a different tone. They will be the most prosperous for the future who see the change and conform themselves to it.

The principle, then, that should govern your conduct in dealing with an adverse witness, with a view to *discredit* him, should be that which you would recognise in your private capacity as a *Christian gentleman*, and which may be summed up in three words—JUSTICE, TRUTH, CHARITY. You have *no right* to tempt, or terrify, or entrap him into falsehood. You have *no right* to charge him with falsehood, unless you are in your own mind entirely convinced that he is *lying*, and not that he is merely *mistaken*.

JUSTICE demands that you deal with him as you would be dealt with by him, were you the witness and he the Advocate. TRUTH demands that you make no endeavour to misrepresent him, or to distort the meaning of his words, contrary to your own conscientious conviction of his honesty. CHARITY demands that you put upon his evidence the construction most accordant with good *intentions*.

Only when you are in your own mind thoroughly

persuaded that the witness is *not* telling the truth, may you with propriety use your art to entrap him into contradictions, or charge him with falsehood in word or manner.

And, indeed, it is very rarely that anything is to be gained by such prostitution of the abilities of the Advocate as that against which we are desirous of warning you. In fact, witnesses do not deliberately *lie* so frequently as the inexperienced and unreflecting are wont to believe. All who have had much practice in examination will subscribe to the assertion,—that downright, intended, conscious *perjury* occurs but seldom in our Courts.

But, on the other hand, the same experience will teach you this, which is equally important to be understood,—that evidence is far *less* trustworthy than the public, or juries, who represent the public, are accustomed to suppose it to be. In few words, there is much *less* of *perjury*, and vastly *more* of *mistake*, in witnesses, than the unaccustomed observer would imagine to be possible, unless he had studied the physiology of the mind, and had thence learned how manifold are the sources of error, and how imperfect is the sense that conveys the knowledge of facts, and the understanding that tries, and proves, and applies them.

To the Advocate, however, it is of vital importance that he should attain to the full comprehension of this truth, for it must be the guiding-star of his conduct in the cross-examination of witnesses. The consciousness of it will govern his words, his voice, his manner; change the tone of



mistrust into that of confidence; the language of rebuke into that of kindness; the eye that flashes anger and kindles defiance into the look that wins to frankness.

Do not let us be misunderstood in the use of the phrase, to *discredit* a witness. We do *not* mean by this the vulgar notion of discrediting by making him *appear* to be *perjured*. Our meaning is simply to show, by cross-examination, that his evidence is *not* to be implicitly *believed*; that he is *mistaken* in the whole or in parts of it. By adopting this manner of dealing, you not only act in strict accordance with justice, truth, and charity, but you are far more likely to attain your object than by charging wilful falsehood and perjury, by which course, if you fail to impress the jury, you endanger your cause. It not unfrequently happens that a charge of perjury against the witnesses on the other side induces the Jury to make the trial a question of the honour of the witnesses, instead of the issue on the record. They say, "if we find for the defendant, after what has been said by his counsel against the plaintiff's witnesses, we shall be confirming his assertion that they are perjured, which we do not believe;" and so, to save the characters of their neighbours, whom they believe to be unjustly impugned, they give a verdict against the assailant. Such a result of brow-beating and of imputations of perjury and falsehood is by no means rare, and while it affords another instance of the truth of the remark we have already made more than once, that *honesty is wisdom as well as virtue*, it should be

treasured in your memory as a warning against a style of cross-examination once popular, but now daily falling more and more into disrepute, and which is really as bad in policy as it is discreditable in practice.

In truth, without imputing perjury, you will find an ample field opened to you for trying the testimony of a witness by cross-examination, and of showing to the jury its weakness or worthlessness, by bringing into play all that knowledge of the physiology of mind and of the value of evidence, which it is presumed that you have acquired in your laborious training, before you ventured to undertake the office of an Advocate. Thus armed, you will experience no difficulty in applying the various tests by which the truth is tried, with much more of command over the witness and vastly more of influence with the jury, who will *always* acknowledge the probability of *mistake* in a witness, when they will not believe him to be *perjured*. And do not adopt this course as if it were an art, a contrivance, but frankly and fully, with entire confidence in its *policy* as well as its rectitude, so that no lurking doubt may betray itself in your manner, to throw suspicion over your sincerity. It often occurs that an unpractised Advocate arms the witness against him, before he has opened his lips, by a certain defiant look and air as he rises from his seat, as if he were already revelling in anticipated triumph over his victim. Nothing is more fatal than this to success in cross-examination, for it provokes the pride of the witness, sets him on his

guard, and rouses him to resistance. He says in his heart "You shall get nothing out of me." And it is probable that nothing you will get.

A sober quietness, an expression of good temper, a certain *friendliness* of look and manner, which will be understood, although it cannot be described, should distinguish you when you rise for the cross-examination of a witness, the truth of whose testimony you are going to try, not by the vulgar arts of brow-beating, misrepresenting, insulting, and frightening into contradictions, but by the more fair, more honourable, and more successful, if more difficult, method of showing him to be *mistaken*. You must begin with conciliation<sup>1</sup>; you must remove the fear<sup>2</sup> which the most truthful witness feels when about to be subjected to the ordeal of cross-examination. Let him understand, as soon as possible, that you are not going to insult him,<sup>3</sup> or to entrap him into falsehood,<sup>4</sup> or to take unfair advantages of him,<sup>5</sup> that you have confidence in his desire to tell the truth and all the truth, and that your object is to ascertain the precise limits of positive truth in the story he has told.

Proceed very gently, and only, as it were, with the fringe of the case, until you see that the witness is reassured, and that a good understanding has been established between you, to which a smiling question that elicits a smiling answer will be found materially to contribute. A witness, who stubbornly resists every other advance on the part of the Advocate, will often yield at once to a good-humoured remark that compels the lip to curl.

This point gained, you may at once proceed to your object.

The other purposes of cross-examination have been previously explained. We are now considering only what is to be done when the design is to *discredit* the testimony, not by discrediting *the witness*, but by showing that he is *mistaken*; that he has been *himself deceived*. Now, the way to do this is by closely inquiring into *the sources of his knowledge*; and here it is that so much analytical skill, so intimate an acquaintance with mind and its operations, is demanded on your part, in order that you may avert resistance to your inquiries on the part of the witness.

Perhaps it is unnecessary to inform you that it is useless to put to a witness directly the question, if he is sure that the fact was as he has stated it. He will only be the more positive. No witness will ever admit that he *could* have been mistaken. This is shown remarkably in cases where personal identity is in question. Everybody admits that there is nothing upon which all persons are so often mistaken; yet is there nothing upon which witnesses are more positive, and that positiveness is continually influencing inconsiderate juries to erroneous verdicts, as the records of our criminal law painfully prove; for, of the wrongful convictions, fully one-half have been cases of mistaken identity, in which witnesses have been too positive, and juries too confiding, in a matter which their own daily experience should satisfy them to be of all others the most ~~dubious~~ dubious and unsatisfactory. Instead,

therefore, of asking the witness whether he might not be mistaken, you should proceed at once to discover the probabilities of mistake, by tracing the sources of his knowledge, and by eliciting all the circumstances, internal and external, under which it was formed. It is in this operation that the faculties of the great Advocate are displayed; this it is that calls into play his acquaintance with mental physiology, his experience of men and things, and in which he exhibits his infinite superiority over the imperfectly-educated and the inexperienced.

By what process do you perform this difficult duty, and achieve this triumph of your art? Let us endeavour to describe it.

The witness has detailed an occurrence at a certain time and place, and it is your purpose to show that he was mistaken in some of the particulars, and that the inferences he drew from them were incorrect, or not justified by the facts. Your first proceeding, to this end, is to *realise the scene* in your own mind. Your fancy must paint for you a picture of the place, the persons, the accessories. You then ask the witness to repeat his story—you note its congruity or otherwise with the circumstances that accompanied it; you detect improbabilities or impossibilities. You see as *he* saw, and you learn in what particulars he saw imperfectly, and how he formed too hasty conclusions; how prejudice may have influenced him; how things dimly seen were by the imagination transformed into other things in his memory.

How erring the senses are, and how much their impressions are afterwards moulded by the mind; how very fallible is information, seemingly the most assured, it needs no extensive observation to teach. If you make inquiry as to an occurrence in the next street, ten minutes after it has happened, and from half-a-dozen actual spectators of it, you will receive so many different accounts of its details, and yet each one positive as to the truth of his own narrative, and the error of his neighbour's. It is so with *all* testimony; and hence, whatever depends upon the senses or the memory of a witness, however honest and truth-speaking he may be in intention, is fairly open to doubt, to question, to investigation, and to denial, for the purpose of showing that it ought not to be relied upon, and that it may have, upon the question under consideration, a bearing altogether different from that for which it was employed by the party who had adduced it.

But it is not enough to ascertain that the witness is *mistaken*; to satisfy the jury, when you come to comment upon his evidence, you must learn also whence the mistake arose, and you should not leave him until you have attained your object. Sometimes you may procure this from the witness's mouth, thus:—Having gathered from his description that, in the circumstances of place, or time, or otherwise, as the case may be, it was impossible or improbable that he could have seen or heard enough to justify his positive conclusion, you may plainly put to him the question, how it is that, being so situated, he *could* have so seen or heard? This

will usually elicit an explanation that will at once be a confession of his mistake, and a discovery of the cause of it.

Caution is nevertheless necessary in this proceeding, and it should only be resorted to when other means have failed; for, having ascertained to your own satisfaction the mistakes of the witness, and the facts that prove them to be mistakes, the exhibition of them will come with far better effect in your address to the Jury, when lucidly displayed in argument, than when developed bit by bit in the course of a long examination. Usually, it will be sufficient for you that you have the *fact*. Besides, it is as well that the witness himself should not be made conscious of detected error, lest, fearing to have his veracity impugned, he should close his mind against you and resist further investigation into the parts of his story which yet remain to be tried.

The art of cross-examination, however, is not limited to the detection of *mistakes* in a witness. Sometimes it happens that you have good reason to believe that he is not mistaken, but that he is *lying*; and when you are *assured* of this in your own mind, but not otherwise, you may treat him as a liar, and deal with him accordingly. Your object will now be to *prove* him to be so, out of his own mouth; and it will be permissible to resort to many a stratagem, for the purpose of *detection*, which might not be fairly used towards a witness whom you really believed to be honest, but mistaken.

The question has often occurred to us, whether

it is more prudent to show such a witness that you suspect him, or to conceal your doubts of his honesty? Either course has its advantages and its disadvantages. By displaying your doubts, you incur the risk of putting him upon his guard, and leading him to be more positive in his assertions, and more circumspect in his answers; but, on the other hand, a conscious liar is almost always a moral coward; when he sees that he is detected, he can rarely muster courage to do more than reiterate his assertion; he has not presence of mind to carry out the story by ingenious invention of details and a consistent narrative of accidental circumstances connected with it. A cautious concealment of your suspicions possesses the advantage of enabling you to conduct him into a labyrinth before he is aware of your design, and so to expose his falsehood by self-contradictions and absurdities. Perhaps either course might be adopted, according to the character of the witness. If he is a cool, clever fellow, it may be more prudent to conceal from him your doubts of his veracity, until he has furnished you with proofs. If he is one of that numerous class who merely get up a story, to which they doggedly adhere, it may be wise to awe him at once, by notice that you do not believe him, and that you do not intend to spare him. We have often seen such a witness surrender at discretion on the first intimation of such an ordeal. This is one of the arts of Advocacy which cannot be taught by anything but experience. It is to be learned only by the language of the eye,\*



the countenance, the tones of the voice, that betray to the practised observer what is passing through the mind within.

But having, after a glance at your man, resolved upon your course, pursue it resolutely. Be not deterred by finding your attacks parried at first. Persevere until you have attained your object or are convinced, by your examination, that your impression was wrong, and that the witness is telling the honest truth. If you determine to adopt the course of hiding from him your doubts, be very careful not to betray them by your face, nor by the tone of the voice, where the feeling is so often shown while the words are otherwise framed. To be a good Advocate you must be a good actor, and it is one of the faculties of an actor to command his countenance. Open gently, mildly; do not *appear* to doubt him; go at once to the marrow of the story he has told, as if you were not afraid of it; make him repeat it; then, carry him away to some distant and collateral topic, and try his memory upon *that*, so as to divert his thoughts from the main object of your inquiry, and prevent his seeing the connection between the tale he has told and the questions you are about to put to him. Then, by slow approaches, bring him back to the main circumstances, by the investigation of which it is that you purpose to show the falsity of the story.

The design of this manœuvre is, of course, to prevent him from seeing the connection between his own story and your examination, so that he

may not draw upon his imagination for explanations consistent with his original evidence; your purpose being to elicit inconsistency and contradictions between the story itself and other circumstances, from which it may be concluded that all or a great part of it is a fabrication.

As a specimen of the sort of cross-examination to which we are referring, we may name an instance that fell within our own experience.

In a case of affiliation of a bastard child, the mother had sworn distinctly and positively to the person of the father, and to the time and place of their acquaintance, fixed, as usual, at precisely the proper period before the birth of the child. In this case, the time sworn to was *the middle of May*, and the place, the putative father's garden. For an hour she endured the strictest cross-examination that ingenuity could suggest: she was not to be shaken in any material part of her story; she had learned it well, and with the persistence that makes women such very difficult witnesses to defeat, she adhered to it. It suddenly occurred to us that she might be thrown off her guard by a question for which she was not likely to be prepared, and the examination proceeded thus:—"You say you walked in the garden with Mr. M.? Yes. Before your connection with him? Yes. More than once? Yes; several times. Did you do so afterwards? No. Never once? No. Is there fruit in the garden? Yes. I suppose you were not allowed to pick any? Oh! yes; he used to give me some. What fruit? Currants and raspberries. Ripe? Yes."

This was enough. She was detected at once. The alleged intercourse was in the middle of May. Currants and raspberries are not ripe till June. This instance will illustrate our meaning better than any verbal description of it. In this case the woman's whole story was untrue. She had fallen in with the suggestion about fruit, to strengthen, as she thought, her account of the garden; but she did not perceive the drift of the questions, and consequently had not sufficient self-command to reflect that fruit is not ripe in May.

This will serve as an illustration of the manner in which the most acute witness may be detected in a lie. But patience in the pursuit is always necessary. You may be baffled again and again, but be careful never to let it be seen that you are baffled. Glide quietly into another track, and try another approach; you can scarcely fail of success at last. No *false* witness is armed at *all* points.

But, in this process, somewhat tedious, it is true, to yourself, and not always comprehended by others, the art of the witness will not be the only nor the severest trial of your temper. Too often you will find the Judge complaining of tediousness or repetition. He does not always see your drift, and, especially if you are young, he is too apt to conclude that you are putting questions at random, and to refuse you credit for a meaning and a design in your queries. You must, in such case, firmly but respectfully assert your right to conduct your examination after your own fashion, and proceed, without perturbation, in the path your deliberate

judgment has prescribed. Your duty is to your client, and you must discharge it fearlessly, leaving to the event and to experience to vindicate your motives and prove the wisdom of your conduct. After awhile the Judge will discover that you do not act without a sufficient reason, and that you have a design in your course of cross-examination. It must, however, be confessed that cross-examination is so often conducted at random, without aim, or plan, or purpose, as if for the mere appearance of saying something, that Judges may well be excused for suspecting a divergent course in a junior, and attributing to inexperience a string of questions which are, in fact, the result of profound deliberation and design.

If, however, you adopt the other course, and, instead of surprising the witness into the betrayal of his falsehood, you resolve to bring it out of him by a bold and open attack—to *awe* him, as it were, into honesty—aspect and voice must express your consciousness of his perjury, and your resolve to have the truth. A stern, determined fixing of your eye upon his will often suffice to unnerve him, and it will certainly help you to assure yourself whether your suspicions are just or unjust. It may be stated, as a general rule, that a witness who is lying will not look you boldly and fully in the face, with a steady gaze; his eye quivers and turns away, is cast down, or wanders restlessly about. On the contrary, the witness who is speaking the truth, or what *he believes* to be the truth, will meet your gaze, however timidly, will look at you when

he answers your questions, and will let you look into his eyes. There may be rare exceptions to this rule, but we can scarcely recall an instance in which it has failed to inform the Advocate whether the person he is subjecting to cross-examination is the witness of truth or of falsehood.

Thus assured, and pursuing your plan of bold attack, there needs to be no circumlocution, no gradual approaching, as in the other method of surprisal, but go straightway to your object, plunging him at once into the story you are questioning. Make him repeat it slowly. It will often be that, under the discomposure of your detection of his purpose, he will directly vary from his former statement, and if he does so in material points, which are undoubtedly sufficient to discredit him, it will usually be the most prudent course to leave him there, self-condemned, instead of continuing the examination, lest you should give him time to rally, and, perhaps, to contrive a story that will explain away his contradictions. If, however, his lesson is well learned, and he repeats the narrative very nearly as at first, you will have to try another course, which will tax your ingenuity and patience.

Procure from him in detail, and let *his words* be taken down, the particulars of his story, and then question him as to associated circumstances, upon which he is not likely to have prepared himself, and to answer which, therefore, he must draw on his invention at the instant. Some little ingenuity will be necessary on your part, after

surveying his story, to select the *weakest* points for your experiment, and to suggest the circumstances least likely to have been pre-arranged. Having obtained his answers, permit to him no pause, but instantly take him to a new subject; lead his thoughts away altogether from the matter of your main topic. The more irrelevant your queries, the better; your purpose is to occupy his mind with a new train of ideas. Conduct him to different places and persons and events. Then, as suddenly, in the very midst of your questionings, when his mind is the most remote from the subject, when he is expecting the next question to relate to the one that has gone before, suddenly return to your first point, not repeating the *main* story (for this, having been well learned, will probably be repeated as before), but to those circumstances associated with it upon which you had surprised him into *invention* on the moment. It is most probable that, after such a diversion of his thoughts, he will have forgotten what his answers were, what were the fictions with which he had filled up the accessories of his false narrative, and having no leisure allowed to him for reflection, he will now give a different account of the circumstances, and so betray his falsehood. Of all the arts of cross-examination, there is none so efficient as this for the detection of a lie.

Another excellent plan is to take the witness through his story, but not in the same order of incidents in which he told it. Dislocate his train of ideas, and you put him out; you disturb his

memory of his lesson. Thus, begin your cross-examination at the middle of his narrative, then jump to one end, then to some other part the most remote from the subject of the previous question. If he is telling the truth, this will not confuse him, because he speaks from impressions upon his mind; but if he is lying, he will be perplexed and will betray himself, for, speaking from the memory only, which acts by association, you disturb that association, and his invention breaks down. .

When you are satisfied that the witness is drawing upon his invention, there is no more certain process of detection than a *rapid fire* of questions. Give him no pause between them; no breathing place, no time to rally. Few minds are sufficiently self-possessed as, under such a catechising, to maintain a consistent story. If there be a pause or a hesitation in the answer, you thereby lay bare the falsehood. The witness is conscious that he dares not stop to think whether the answer he is about to give will be consistent with the answers already given, and he is betrayed by his contradictions. In this process it is necessary to fix him to time, and place, and names. "You heard him say so?" "When?" "Where?" "Who was present?" "Name them." "Name one of them." Such a string of questions, following one upon the other as fast as the answer is given, will frequently confound the most audacious. Fit names, and times, and places, are not readily invented, or, if invented, not readily remembered. Nor does the objection apply to this

that may undoubtedly be urged against some others of the arts by which an Advocate detects falsehood, namely, that it is liable to perplex the innocent, as well as to confound the guilty; for, if the tale be true, the answers to such questions present themselves instantaneously to the witness's lips. They are so associated in his mind with the main fact to which he is speaking, that it is impossible to recall the one without the other. Collateral circumstances may be forgotten by the most truthful, or even be unobserved; but time, place, and audience, are a part of the transaction, without which memory of the fact itself can scarcely exist.

There is no branch of our subject on which a wider difference of opinion prevails, than upon the weight to be given to *variations* by a witness in the *telling* of a story—Counsel usually dwelling upon them as evidences of falsehood, and Judges almost always directing the Jury that they are rather evidences of honesty. As these views are often sincerely entertained by both, and considerable practical inconvenience results from so wide a difference, it may be useful, in this place, to endeavour to reconcile the opposite conclusions of intelligent minds, as only they can be reconciled, by reference to *principles*.

Memory is association : ideas return linked together as they were originally presented to the mind, and the presence of one summons the others by suggestion. An event is witnessed, and the scene and its accessories are impressed upon the mind.



But they are only impressed there *as the spectator beheld them*, and not necessarily as they were in reality. It is necessary to ascertain also *the medium* through which he saw or heard, before we can properly estimate the value of his memory. When called upon to bear testimony to a fact, if a man desires to tell the truth, he will describe, as nearly as he can in words, so much as he can recall of the circumstances. But it by no means follows that, every time he recalls the scene, it should present itself to his mind in precisely the same aspect; and for this reason:—the mind does not revive the whole at once, but in succession, and some portions of it will come back more vividly at one time than at another, and, by their very vividness, recall other associations before unremembered. Hence, *differences* in description, and especially new circumstances introduced into a repeated narrative, although each repetition should *vary* from all the former ones, by the addition of some things and the omission of others, do not afford the slightest grounds for imputing perjury to a witness. On the contrary, they are rather a presumption in his favour, for an invention that is learned would probably be recalled *as it was learned*, with the same facts, and almost in the same words.

But it is otherwise with *discrepancies* of statement. These *cannot* exist in a truthful narrative. Repeated ever so frequently, and whatever the *variance* in detail, the story will *always* be consistent with itself, and with its former assertions.

A positive discrepancy is proof that, whatever the cause, whether of design or by the not unfrequent delusion of mistaking imagination for reality, the witness is not speaking the truth, and therefore in such a case, be the motive what it may, an Advocate is justified in pointing out these discrepancies to the jury, and asserting that no faith can be placed in a narrative which thus contains within itself decisive evidence that some portion of it, at least, is not true. By bearing in mind the distinction between *variances* and *discrepancies* in the repetitions by a witness of the same story, the Judge and the Advocate may avoid those contradictions of assertion as to the worth of certain testimony, which sometimes shake the confidence of juries in arguments that really deserve their consideration, and which are equally disagreeable to the speaker and to the commentator. Let the Advocate abstain from dwelling upon mere *variances*, and let the Judge as cautiously assure himself, before he directs the Jury that the Advocate is wrong in his assertions, that the objections that have been urged are not to *discrepancies* but to *differences*.

We have already noticed the difficulty sometimes experienced by an Advocate, and especially by the beginner, from the impatience of the Judge at repetitions of the same questions. Too often he is met with the remark, "Mr. —, you have asked that question before," or "The witness has already told you." This is doubly disagreeable, for besides putting you on ill terms with the Court,

it disturbs your plans, and sets the witness on his guard. There is nothing of which the Bench is so little tolerant as of the repetition of the same questions, and yet there are few more effective methods of detecting a falsehood. The witness answers. You note his answer. You pass away to some distant part of the story, or some foreign transaction. You then suddenly return, when his thoughts have been otherwise engaged, when probably he has forgotten his first answer, if it was false, and you obtain a different one, which instantly betrays him. Often have we seen witnesses, who were proof against all other tests, fail before this one. When your design is distinctly this, and not merely a vague, purposeless interrogation, proceed respectfully, but firmly, to show that you have a meaning, and your aims will soon come to be understood and respected by the Court.

Be careful to avoid contracting a habit into which an Advocate is liable to lapse if he does not keep guard over himself at the beginning of his practice. Do not indulge too much in adjurations to witnesses to speak the truth, reminding them continually that they are on their oaths, as "Now, sir, upon your solemn oath;" "Remember you are upon your oath, and take care what you say;" and such like. If frequently introduced, they lose their force by repetition. They are very effective when judiciously employed and uttered with due solemnity of tone and manner, and *on fit occasions*; but they should not be put forward on every slight pretence, to frighten an honest, as to awe a dishonest, witness.

Reserve such an appeal for times when it may be used with effect, because with obvious propriety. When you believe that a witness is tampering with his conscience, you may sometimes successfully prevent the contemplated perjury by a solemn appeal, and especially if you add to it an exhortation not to be hasty in his answer, but to think before he speaks. The countenance, the tone of the voice, the very attitude, should express the language you utter. You may word it somewhat after this fashion, "Remember, you have sworn to tell the truth, and the whole truth. Now"—(put the question, and add)—"think before you speak, and answer me truly as you have called God to witness your words." It is one of the faults common to young Advocates, that they make too free an use of this appeal to witnesses, wasting its worth by familiarity; hence, as with all familiar things, the tone and manner that gave it power are lost, and failure is the result.

Sometimes it happens that a witness *will not* answer. He does *not choose* to know. He *will not* remember. He is obstinately ignorant. You are aware that he *could* tell you a great deal, if he pleased, but he has reasons for forgetting. Such a witness will task your skill and patience. To conquer him you will need as much of patience as of art. The first rule is to keep your temper; the second, to be as resolute as himself; the third, to discover his weak place: every person *has* some weak point, through which he is accessible. If you betray the slightest want of temper, the witness

will have the advantage of you, for you will enlist his pride in defence of his determination. If you show him that you are resolved to have an answer, you will shake him by the influence which the strong Will always obtains over the weaker one, and by that wonderful power which persistency never fails to exercise. To find out his weaknesses, you must peruse his character by the art which, it is assumed, you have cultivated, or you would not have adventured in the lottery of such a Profession as that of an Advocate—*the art of reading the mind in the face*. If you have a doubt, a few questions will prove him. Then work him accordingly. The *surest* method is to be smiling and jocose. Many a man, who will withstand unmoved a torrent of abuse, or rather become more obstinate under its influence, will surrender to a smiling face and a good-humoured joke. If these fail, there remains yet another resource, more difficult of appliance, and demanding the most consummate mastery of the art of cross-examination. You must now approach him by *stratagem*. Your object is to procure from him an admission of so much that he cannot help telling the whole. The difficulty of this consists in the extreme caution required to approach him, so that your object shall not be perceptible ; so to frame your questions that he shall not see the connection between the answer he is about to give and the confession you desire to extract from him. In appearance, the questions must be dissevered from the immediate subject sought, but, in fact, they must be associated

with it. The approach must be so gradually made as not to excite suspicion; and perhaps it is well to open with something quite foreign to the subject-matter. Having obtained an answer, you put another query that appears naturally to follow from the former, and so on, until you link with the question something that is associated with the matter sought for. It is not easy for a witness to discover the links of such a chain, and he is sure to make some admissions that negative his alleged ignorance of the transaction, and compel him, having yielded so much, to surrender the whole.

Taking, then, this maxim for your guidance that, whatever sophistry may suggest to the contrary, you have *no right* to attempt to *discredit* a witness by perplexing him into contradictions, unless you entertain the strongest suspicion that he is not telling the truth, or the whole truth, let us now proceed to consider what kind of contradiction is requisite to such a conclusion, for upon this there is evidently much misunderstanding among inexperienced Advocates.

Remember, that your object is to convince the Judge and Jury that the witness is unworthy of credit. In answer to the questions of his own Counsel in the examination-in-chief, he has told an apparently straightforward and consistent story. He could scarcely do otherwise. He had previously made his statement to the Attorney; it had been taken down and read to him, perhaps more than once; he has had leisure to supply whatever was

defective, or to clear up whatever was obscure. His cautious Counsel has also employed his ingenuity in the avoidance of any questions that might mar the completeness of the narrative. If you reasonably suspect that the story is forged, or coloured, or only partially told, it will be your duty to discover and display its defects. If you believe it to be a falsehood or a misrepresentation, it will be your endeavour to make him *contradict* himself. If you believe that there is a *suppressio veri*, your ingenuity will be exerted to ~~extra~~ct the truth that had been withheld.

Beware that you fall not into the fault, only too common with the inexperienced, of seizing with eager triumph upon *small* and *unimportant* discrepancies. Every man's experience teaches him that there are few who can tell the same story twice in precisely the same way, but they will add or omit something, and even vary in the description of minute particulars. Indeed, so well known is this, that a *verbatim* recital of the same tale by a witness is usually taken as satisfactory proof that he is repeating a lesson he has learned, and not narrating facts he has seen. To be of any value to you for the purpose of discrediting his testimony, the contradiction must be on some *material* particular, or some incidents connected with it which, according to common experience, a man is not likely to have observed so slightly that, in the course of ten minutes, he would give two different descriptions of it. In this, as in all matters of an Advocate's duty, remember that you are dealing

with a Jury composed of men of common sense and experience in life, who cannot understand refined distinctions, and have no respect for petty artifices and small triumphs over a witness's self-possession or memory, and that you will not win their verdict unless by your cross-examination you show that the witness is not *puzzled*, but *lying*. Yet how often may this error be seen in our courts, and verdicts lost by the very cunning that was pluming itself upon its ingenuity.

When a witness, upon his examination-in-chief, anticipates the Counsel, and, instead of waiting to be questioned, or after two or three questions have been put to him, proceeds to tell his whole story, and, as is often seen, will go on in spite of every effort made to stop him, you should observe him closely, to ascertain from his manner whether he is telling the truth, or merely repeating a lesson learned by heart. It is wrong to suppose, as some do, that when a witness thus dispenses with questions and pours out his whole story in a continuous stream, he is therefore always lying. It is not so. There are many minds in which the association of ideas is so fragile that, if the thread is once snapped, they cannot, without great difficulty, take it up again at the place where it was broken; they must begin at the beginning and go right through every incident as it occurred, however trivial or irrelative to the main story; conscious of this defect, and once set a-going, they have an irresistible impulse to proceed without pause until they have delivered themselves of all they have to say.



Such a witness, it is obvious, is not only *not* to be discredited, but his testimony is really of more worth than that of a more passive witness, because the very structure of mind that prevents him from taking up the thread of a story at any point, and the memory that can only be revived by the recalling of every circumstance in the precise order of its occurrence, forbids the introduction of fictions, which would necessarily destroy the entire chain and plunge his mind into chaos.

*Your* care will be to distinguish between the witness who from *this* cause runs through his story, and the witness who does so because he is repeating a lesson learned by rote. Close observation will enable you to discover a difference in the look, the tone, the manner and the language. When relating what he has *seen*, there is always an aspect of intelligence, even in the dullest; the eye kindles, the face brightens, the expression changes with the incidents narrated. Still more does the *tone of the voice* reveal the speaker's truth; its changes are dramatic; it varies with every emotion that flashes across the mind, awakened by the recalling of the incidents described. The *manner* is usually eager and energetic and in strict accordance with the tones, the aspect, and the theme. And even if these signs should be wanting you must not, therefore, decide against the veracity of the witness, until you have considered his *language*. If he is honest, his language will always be such as is consistent with his condition of life—appropriate to age, sex, education and calling. Moreover, it

will exhibit that fitness for the subject, without reference to structure of sentences, which always distinguishes extempore narrative. If these characteristics, or either of them, be present, you may safely assume that the witness is telling the truth, but that he is only able to do so after his own fashion of a continuous story, and cannot recall it by scraps, under interrogation.

If, on the other hand, he is repeating by rote a lesson which he has committed to memory, you will find wanting in him all or most of the signs of truth above described. He stands quite still, excepting, it may be, an uneasy motion of the hands or feet. His face has no meaning in it. His eyes are fixed, not upon the Counsel, the Judge, or the Jury, but upon the wall, or more commonly turned upwards, with a sort of vacant stare. His voice is monotonous and expresses no emotion. His delivery is rapid, unless when seized by a sudden forgetfulness, when he makes a full stop, or, after stumbling a little, tries back again, in hope to regain the lost word or thought. His language, also, is almost always *inappropriate* to his position, for in such case it would seldom be his own composition that he has learned, but something which another has put into words, and which words would not be those of the pupil, but of the master. A single expression will often suffice to betray to you this sort of *taught testimony*, when it is one which you know that such a person as the witness would not have used, and perhaps there is no test so difficult to evade, and so conclusive where it pre-

vails, as this of *language*. The reason is plain. A witness learns his lesson thus. He tells what he knows to the Attorney, or his Clerk. If they be of the unscrupulous class, which has happily become so rare, the witness is informed that his evidence is of no use, but that if he had known so and so he would have been taken to the Assizes. The hint suffices. The memory is racked again, and the testimony desired is *then* found. It is taken down in writing. His entire story is put into formal shape ; it is read over to him again and again, until he has it almost by heart. He learns, not merely *the facts* he is to prove, but the very *words* in which those facts are narrated in the brief, and he repeats them as he has learned them.

Having thus satisfied yourself of the fact that he is lying, you may, in your cross-examination, avail yourself of it to discredit the witness with the Jury ; but, unless so satisfied, you ought not so to attack him.

Your attack may be most successfully conducted thus. Without previous questioning, come at once to the point, and ask him to repeat his account of the transaction. He will do so in almost the self-same words, with the same aspect and manner, and in the same tone, differing palpably from his bearing and tone and language before and after the episode. So certain is this test that, if it fails, you may fairly give to the witness the benefit of the doubt, and say that, whatever other objections may be offered to his testimony, it is not a story learned and repeated by rote.

The recent alteration in the Law of Evidence, not only permitting, but compelling, the examination of the parties to a suit, calls for some observations before we conclude the subject of cross-examination, for it will probably require of the Advocate a special direction of his faculties.

This wise measure was for a long time successfully resisted, on the plea that, so great was the interest of parties, and such, therefore, the temptation to falsehood, no reliance could be placed upon their testimony. To this the answer was, that the security of Judges and Juries in the reception of evidence is not so much dependent on the oath taken by the witness to speak the truth, as upon the sifting to which the evidence is subjected by cross-examination; that it is unjust to exclude *all* parties to suits, because *some* might not be trustworthy, and that the same persons who were deemed competent to try the value of all other testimony were equally competent to try that of the parties, whom, because of their interest, they would necessarily watch with the greater strictness, and receive with the more caution.

This argument at length prevailed, and the witness-box is now open to all, leaving it to the sagacity of Counsel and the discretion of the Court to determine, from the demeanour of the witness, the intrinsic probability of his story, the manner in which he endures a cross-examination, and the other tests by which truth is distinguished from falsehood, whether he is worthy of credit, and to what extent. Thus will a new duty devolve upon

the Advocate for the future in the examination and cross-examination of *the parties*.

In the examination-in-chief you will require to observe no difference of conduct towards a party and another witness, excepting, perhaps, a little care to *rein him in* if he should appear to be too eager, or inclined to pass the strict boundary of truth. But, in cross-examination, you must take into your account the fact that he has a strong bias of interest which *may* tempt him to tell a deliberate lie, but which is much *more likely* to colour his impressions, and produce *self*-deception, so that he may have the most confident belief in the truth of that which he is stating, and yet it may be false in fact. Therefore, in almost all cases where a party to the suit is a witness, it will be your duty to subject him to the most rigid cross-examination, for the purpose of testing his accuracy. The manner of doing this will be somewhat different from that which has been suggested as applicable to other classes of witnesses.

You may *assume* the existence of a strong prejudice and bias, but not, therefore, necessarily of an *intention* to deceive. Great caution will consequently be required in dealing with him. You will have occasion to employ by turns all the tests of truth that have been already described. . You will soon discover, from the manner of the witness, if he means well, if he is scrupulous, or if he is blinded by his feelings, or deliberately determined, at any cost of veracity, to advance his own cause. His countenance, his tone, his manner of answering

the questions put to him, will sufficiently reveal his character.

If he is manifestly desirous of speaking the truth, your course is clear. Let him see that such is your opinion of him. Encourage his honest intents by frank acknowledgment. If the examination-in-chief has brought out only a portion of the facts, it will be your business to supply the deficiencies and elicit the whole story.. No ingenuity will be required for this with such a witness. You may advance directly to your object. He will give straightforward answers to your questions, and the more plain they are, the more ready and full will be his reply. But remember that such a witness is the most dangerous one to you. The same honesty which enables you to obtain a ready answer to your questions, and to elicit every circumstance connected with the transaction, will carry conviction to the Jury also, and his testimony will be received with unhesitating confidence. If, therefore, you do not expect to obtain from him some facts or explanations which may weaken the case on the other side, it will be more prudent not to cross-examine him at all, or only to put a few questions that have no bearing on the case, merely that you may not appear to have abandoned your cause. The more truthful he is, the more likely it is that every answer you will obtain will make his case the stronger, and damage you more and more. Before you begin your cross-examination, ascertain from your Attorney if there is really any probability

of *explaining away* the facts proved by the witness. If that is hopeless, your wisest course will be to take the chance of *omissions* in the examination-in-chief, which are always more or less to be found, by reason of the fear which a cautious counsel has of putting questions that *may* elicit unfavourable replies, and so to trust to your ingenuity to make the most of *them* in your address to the Jury. At all events, a cross-examination is more likely to injure than to help you.

But if you see that the witness is *biassed by his feelings and interest*, you must approach him after another fashion. Your ingenuity will now be called into play. You must employ some artifice. Direct questions will not suffice. You must approach him with caution, and indirectly. Begin by giving him credit for *good intentions*. Do not *appear* to mistrust him. Flatter him even with the assurance that you believe he *desires* to tell the whole truth. It is a great point to have him well pleased with himself, for your purpose is, not only to unveil him to others, but to strip from his own eyes the veil of *self-deception*, so that his vanity will be enlisted against you, and it will be prudent to start with conciliating as much as possible that formidable antagonist to the Advocate. Remind him, by your first question, that he is a party to the cause, and has the strongest interest in the result. This will operate as a useful caution. Follow it with the assurance of your own confidence that, in spite of this bias, he *desires* to tell the whole truth; but, although he has no intent

to deceive, the truth is not as he has stated; blinded by his feelings or his interest, he has seen it only partially, or distorted, or falsely coloured. Your duty is either to elicit the very truth as it was, or to show that, being thus self-deceived, his testimony is not to be relied upon. How may you best do this?

Remember the position of the witness. He has *impressions* upon his mind which he *believes* to be *true*. He, therefore, unhesitatingly swears to them as *facts*. It is obvious that direct questioning will fail to disturb them, for to a mere repetition of the question as to what he saw or heard, the same answer as before will be as promptly and distinctly given. Again he tells you what was his impression of the fact, and it is all that he *can* tell you; it is all, in truth, which any of us can tell, for, with every man, knowledge is only of the impressions of his own mind, and not of the *very fact itself*, which may present itself to many minds in many different aspects. The only means, then, of shaking such testimony is to show it to be inconsistent with other facts, or with those strong probabilities arising out of the usual order of things, the ready perception of which constitutes what is called *common sense*. It is in eliciting this inconsistency, either with the rest of the story, or with the common sense of mankind, of which a Jury is generally a pretty fair representative, that the skill and ingenuity, aided by the experience, of an Advocate is demanded. Many hints for this purpose have been already given, which are no less applicable to the case now under



consideration, and to which the reader is again referred for instructions as to the best manner of attaining the object now sought. There is no difference in this respect in the cross-examination of a witness having the interest of a party, and that of a witness biassed by any other interest. In all, the process will be the same ; to approach them by *indirect*, and *not* by direct, questions, and to employ all your efforts to elicit contradictions and inconsistencies between the facts positively asserted by the witness and other undoubted facts, or between his testimony and probability and common sense, from which you may, in argument to the Jury, successfully show that no reliance can be placed upon the evidence, not because the witness has been guilty of perjury, or intends to deceive, but because he has fallen into the error, to which the very best of us is liable,—of having our senses and our memory imposed upon by our interest, our wishes and our feelings. And this is a line of argument which rarely fails to carry with it the convictions of the Jury, and the approval of the Judge, because it is in accordance with their experience, and is infinitely more effective than the more frequent one, which imputes every mistake or misstatement to deliberate perjury.

It would be but an impertinent repetition of that which has been already minutely examined to detail here how you may obtain from a biassed witness satisfactory proof of the distortion of his mind by reason of that bias. The present purpose is only to suggest so much of the *new* duties of an Advocate

as would appear to be imposed upon him by reason of the *new law* that places the *parties to a suit* in the witness-box.

When a party to the suit is, under the provisions of the new statute, called as a witness, and from his manner of answering the questions put to him by his own Counsel, you have just cause to suspect that he has placed himself in the box with premeditated purpose to make out his own case at any sacrifice of truth, your first duty in dealing with him will be to assure yourself that your suspicions are well founded; for, unless you are really convinced of this, you will have no right to charge him with perjury, or to conduct your cross-examination as if you believed him to be lying. The best mode of trying him will be to put to him some plain question bearing directly upon the case, the answer to which, if truly given, will tell against him, and which, if falsely given, he must know to be false. Your ingenuity will, without difficulty, discover in your brief some facts contradictory of his statements, which will serve for this purpose, and, if he denies those facts, as in consistency with his own story he must, you will know that he is wilfully lying and will proceed to deal with him accordingly.

Already, in an earlier part of this chapter, we have endeavoured to show how the cross-examination of a perjured witness may be conducted so as to make his perjury apparent to the Jury. In dealing with *a party* to the suit you will have this further advantage, that the Jury will be more

inclined to look with suspicion upon his testimony, will watch it with more strictness, and subject it to a severer scrutiny, than would be given to the evidence of an unbiassed witness. Now there is but *one* method of defeating falsehood in the witness-box, and that is by involving it in a maze of *contradictions*, which it is almost impossible for the most skilful liar to avoid, because the quickest mind cannot in a moment calculate the effect of its present answer upon the past, or anticipate the bearing of the reply it is about to give upon the questions that are to follow. Hence it is that cross-examination has been always deemed the surest test of truth, and a better security than the oath.

The witness has already echoed the questions of his own Counsel, and proved his own case, and being well prepared with that, he will of course repeat the lesson he has learned, without alteration or hesitation, and the more positively the more you press him; therefore it is a waste of time and helping him more than yourself to repeat those selfsame questions. Yet how often is this done by Advocates not wanting in experience, and it is the almost universal fault of beginners. With a slight alteration of phrase and an attempt to be stern in tone and eye, they persist in repeating the very question which the witness has already distinctly answered. "Do you mean to tell the Jury upon your oath that you heard him say so?" "Will you swear you saw Smith strike him?" and such like; to which the answer is, "I have said so

already.” “I *have* sworn it.” No other answer could be expected. The witness had come prepared to prove these very facts, and it is not likely that he would forget them so soon; and, although false, having once sworn to them he could not do otherwise than swear to them again, however frequently the question may be repeated. This manner of proceeding is, therefore, worse than worthless, and you will at once direct your efforts to the eliciting of *contradictions* — by which we do not mean trifling differences of phrase, or discrepancies in small matters, which the witness is not likely to have observed very accurately, and on which, therefore, his story might vary upon every repetition, without any intentional falsehood or any substantial error, but downright unquestionable contradictions of statement, so obvious that the witness *could* not have believed both to be true. If he is lying, no presence of mind or ingenuity will enable him to escape from your pursuit, provided you conduct it with proper skill, giving him no time for reflection, and so engaging his attention that he shall not have leisure to digest his answers, or to see how they square with the story he has already told.

The principle of this manner of cross-examination is, that *truth is always consistent with itself*. If the witness is telling the truth, his answers will be in *substantial* accordance with the story he has already told, and with any questions that may be put to him. He has no need to consider their bearing, and therefore his reply is as prompt as

memory. On the contrary, the witness who is telling a false story cannot so construct it that it shall be consistent—not merely in itself, for that is not difficult,—but with other associated circumstances which it is impossible to anticipate.

Hence it is that you must try him by questions on matters which only bear *indirectly* upon the point at issue. As, for instance, if he have sworn that, on a certain day a certain person made to him a certain statement. You cannot directly shake *the fact* thus sworn to, for the witness has but to adhere to his assertion and he will baffle any amount of direct interrogation. But it is not at all likely that he has prepared himself with all the accompanying particulars ; therefore you address to him such as these. Where was the conversation held ? At what time of the day ? Who was present ? Were they sitting or standing ? How did he come to the place ? Whom did he meet on the way ? How was he dressed—and the other party ? Did they speak loud or low ? Did they eat or drink together, and what ? Did anybody come in while they were talking ? How long were they together ? When they parted which way did each take ? Whom did he meet afterwards ? At what time did he reach his home ? And so forth, as the particular circumstances of the case may suggest, but always, if possible, preferring facts spoken to by other witnesses, so that you may expose him, not only by his self-contradictions, but by the testimony of others. When questions of this kind are rapidly put, they deprive the false witness of

opportunity to fit them to his previous story. You should also carefully avoid putting them in any natural sequence of time or place, for that is to suggest to him a story which he will invent quite as rapidly as you can construct your questions. Dislocate them as much as possible. Take now one part of the story, then another. Dodge him backwards and forwards, from one object to the other, so that it shall be impossible for him to be prepared by one question for the next, or that one answer shall be the prompter of its successor. The difficulty of doing this well is very great, and therefore, perhaps, it is that it is so rarely seen to be well done ; but it is an accomplishment wanting which the Advocate is not a master of his art, for in none of his many duties is the consummate skill of a great artist so usefully employed and so signally shown as in the exposure by cross-examination of a lying witness, and this art will be more in request than ever, now that all persons, whatever their interest, are admitted to the witness-box, and the law, instead of vainly attempting to determine credibility by an abstract rule, has wisely left it to the discretion of the Court and the Jury, under the protection of cross-examination, to determine in each particular instance whether the individual witness is or is not worthy of credit.

But there is one kind of testimony which will sometimes baffle your utmost skill, and we name it that you may be prepared for it when it comes, lest it should throw you into an awkward perplexity. It is the case of a witness who swears positively to

some single fact, occurring when no other person was present, or but one now dead or far distant, and whom, therefore, it is impossible to contradict, and equally difficult to involve in self-contradiction, because all the circumstances may be true, except the one which he has been called to prove. An instance will make this more intelligible. In order to prove a link in the chain of a pedigree, a witness swears to a conversation with one of the family now dead, in which an ancestor of the claimant was alleged to have been recognised as a relative. It is very probable that the witness did at some time hold some conversation with the deceased in the manner and place described. He has only *added to it* the one false assertion that such a statement was then made. Now it is obvious that in this case all the usual methods of detecting falsehood will fail. The witness can neither be contradicted, nor will he contradict himself, for all that he has told is true, save a few added words, and you will not shake him by an examination as to the circumstances, for they also would be truly stated. Your difficulty is the greater, inasmuch that, so far from aiding yourself by a protracted and skilful cross-examination, you will be likely only to damage yourself, for you will show him to be perfectly truthful in all other parts of his story, and therefore the Jury will be inclined the more implicitly to credit him in that which most materially affects you. In such a case, the most baffling to the Advocate, the most difficult of any that you will encounter in practice, there remains

for you only an appeal to the Jury to look with suspicion upon evidence so easily forged, so impossible to be disproved, and entreat them to try its worth by its intrinsic probabilities, showing them then, if you can, how improbable it is that such a statement should have been so made, or such a circumstance have occurred.

In concluding these remarks on *cross-examination*, the rarest, the most useful, and the most difficult to be acquired of the accomplishments of the Advocate, we would again urge upon your attention the importance of calm discretion. In addressing a Jury, you may sometimes talk without having anything to say, and no harm will come of it. But, in cross-examination, every question that does not advance your case injures it. If you have not a definite object to attain, dismiss the witness without a word. There are no harmless questions here; the most apparently unimportant may bring destruction or victory. If the summit of *the orator's art* has been rightly defined to consist in knowing *when to sit down*, that of *an Advocate* may be described as knowing *when to keep his seat*. Very little experience in our courts will teach you this lesson, for every day will show to your observant eye instances of self-destruction brought about by imprudent cross-examinations. Fear not that your discreet reserve will be mistaken for carelessness or want of self-reliance. The true motive will soon be seen and approved. Your critics are Lawyers, who know well the value of discretion in an Advocate, and how indiscretion in cross-



examination cannot be compensated by any amount of ability in other duties. The Attorneys are sure to discover the prudence that governs your tongue. Even if the wisdom of your abstinence be not apparent at the moment, it will be recognised in the result. Your fame may be of slower growth than that of the talker, but it will be larger and more enduring. The issue of a cause rarely depends upon a speech, and is but seldom even affected by it; *but there is never a cause contested the result of which is not mainly dependent upon the skill with which the Advocate conducts his cross-examination.*

## XXXV.

### RE-EXAMINATION.

THE cross-examination being closed, the duty of RE-EXAMINATION devolves upon the Counsel on the other side. It is usually undertaken by *the Leader*, even although the examination-in-chief had been conducted by the Junior, probably because it is supposed to require the skill and caution which only experience can teach. You will remember that cross-examination is, in like manner and for the same reason, conducted by the Leader as a matter of course, unless, as sometimes is the case, when the witness is unimportant, or he has great confidence in his Junior's ability and prudence, he *requests* you to undertake the task. *Then*, and only then, have you an opportunity of practising the lessons you may have learned.

It will be necessary for you to bear in mind what is the purpose of re-examination, that you may avoid the offence of trespassing beyond the limits

assigned to it, and so exposing yourself to a rebuke from the Judge. Remember, then, that the object of re-examination is simply to obtain from the witness *an explanation* of that which he had said in cross-examination. The necessity for giving to a witness such an opportunity proceeds from the system adopted in our courts of eliciting evidence by means of questions. A witness does not tell his story without interruption, as is the practice in most of the law courts on the continent, but he is required to answer the questions of Counsel, and seldom permitted to do more, or to accompany his answer with an explanation. A skilful Advocate, in his cross-examination, avails himself of this to obtain such answers only as suit his purpose, excluding the explanations that might give them another meaning. It is the duty of the Advocate on the other side to note such replies, and on re-examination to give to his witness the opportunity for explanation denied to him before. Hence the necessity for keeping a very observant eye upon your witness while he is under cross-examination, so that you may discover any desire he may exhibit to give an explanation of an answer, or to add something that might modify its apparent import. Be especially careful to note all such upon your brief; also any answers that appear to be damaging, so that, when you come to re-examine, you may not leave any one unexplained, and that they may the more readily catch the eye, set them down separately, one under the other, marking the most important of them with a cross in the margin, that

the glance may fall upon it in a moment. A little experience will teach you by what signs your witness will indicate that he can explain what he has said. Usually he hastens to add something to his answer, but sometimes he does not immediately perceive the use to which his reply might be put, or he expects that it will be followed by other questions that will enable him to explain; in such case the disappointment is sure to be shown as soon as he finds himself entrapped. If the witness is unconscious of his position, it will be for you to endeavour to remedy the mischief that has been done by rapidly reviewing your instructions and the facts, so far as the evidence has proceeded, to see if they will afford materials to justify you in the dangerous duty of *trying* if the witness *can* explain away what he has said.

Your notes of the cross-examination before you, the work commences. It is a rule that you shall strictly confine yourself to matters that have been mooted in the cross-examination. You are *not* permitted to go into *new* matter. This is the only restriction, for, if the subject has been touched upon, however slightly, by your adversary, you are entitled to go fully into it, and hence it is that a skilful Advocate is commonly enabled to make such good use of the opportunity, for a cross-examination rarely omits to deal more or less with all the most important portions of a witness's testimony. Remember that he is your own witness, and therefore to be dealt with tenderly; his answers will be willing and prompt; you will need no art to procure them. Your caution will rather be required in the way of

*restraint.* Great care must be taken, lest you seek explanations where none can be given, for thus you would certainly do yourself an injury by recalling the damaging answer and making it doubly impressive by reiteration.

Nor is this caution all that is requisite. Without trespassing beyond the limits of the rule, a skilful use of the opportunities sure to be offered by the cross-examination will enable you to elicit *a repetition* of the most important parts of the evidence in chief, and so, by recalling them to the attention of the Jury, not only to revive the impression made by them, but to operate as a set-off against whatever of an unfavourable character may have been extracted by the cross-examination.

All this appears easy enough in the description; but it is very difficult in the practice. Before you have sat in the courts many days, you will discover the vast difference between different Advocates in the ability with which they conduct a re-examination. Sometimes you will see a witness, who has been apparently destroyed by a cross-examination, triumphantly set up again by the admirable skill with which he is re-examined,—every weak point strengthened, every contradiction explained away, every doubt removed, and his original story repeated with confirmations. On the other hand, when undertaken by an inefficient Advocate, you will observe how bad is often made worse by injudicious attempts to mend it, and that which had been left in doubt by his adversary converted into a defeat. The difference will be found to consist mainly in

that *discretion* which enables the Advocate to advance his questions to the precise point at which the answers will be innocuous, and avoiding such as are not touched upon in the cross-examination, so moulding his queries that they shall, while adhering strictly to the rules, necessarily bring out those leading points in his own case which he is desirous of repeating.

Remember, then, that the business of re-examination is the *restoration* of your witness to the confidence of himself and of the jury. It frequently occurs that a witness has been terrified and confused by the cross-examination, even to the loss of memory, or, which is even more dangerous, to the producing in him of an aspect and manner that might be mistaken for conscious guilt. If, therefore, you detect in him any signs of dissatisfaction with himself, your first care will be to revive his self-possession. To him who is sincerely desirous of telling the truth, no position is more painful than that into which he is sometimes betrayed by seeming contradictions, elicited in the course of an ingenious cross-examination, producing upon the audience the visible impression that he has been lying. In such circumstances it is difficult to be discreet and to preserve the temper unruffled. Let your first care be given to this. The witness burns for an opportunity to explain himself; it will be yours to give it to him, but not in the hasty manner in which his feelings prompt him to deliver it, but in fit season and form, as suits your discreeter purpose. Prevent this natural outburst by questions that will show

your sympathy and assure him of your aid to set him right. Soothe his irritation by your words, and aspect, and by tones that are more powerful to soothe than words. When he is restored to himself, take him quietly through his story, in the order in which you have noted upon your brief the questionable points of his cross-examination. Bring out, as far as you can, the *strong points* of his testimony, which had not been shaken, to remind the Jury how much, after all, remained intact. When you come to some doubtful matter, on which the cross-examination had damaged you, extract from the witness an explanation of it, if he can; if he cannot satisfactorily explain it, pass it by, for a failure to effect this object serves only to give it a double importance in the estimation of the court. Here it is that all your sagacity is called into play. It happens frequently that your brief gives you no information on the new point started, and the Attorney who sits behind you cannot help you: it is as new to him as to yourself. Failing help from these sources, you will seek to form a judgment from the manner of the witness, whether the fact is as it appears, or if he can give any explanation of it. If, when questioned upon it, he showed signs of annoyance and an eager desire to say *something more* about it, you may conclude that he can explain and safely call upon him to do so. If this symptom is absent, then your sagacity will be exercised in a review of the internal probability or otherwise of the matter itself. If any improbability appears, you may try with extremest caution to approach

the topic, so as to afford to your witness an opportunity of clearing himself, if he can, but so tenderly that you may retreat unharmed should you find that you are treading on dangerous ground. Wanting all these encouragements, you will prove your *discretion* by passing it unnoticed. Here again we reiterate the caution, so often repeated to you already—never to put a question to a witness without an aim, nor unless you expect to derive some positive advantage from it. It is wiser to leave a bad matter untouched than to notice it, unless you are *sure* that you can make it better. If you cannot do good, you are almost certain to do harm. More of the Advocate's art is shown in *silence* than in *speaking*.

In other respects, the instructions for the examination-in-chief will be applicable equally to re-examination.



## XXXVI.

### THE DEFENCE.

THE Plaintiff's case being closed, that of the Defendant begins.

You will open with an address to the Jury, in which you comment upon the case, as disclosed by the plaintiff, and state the case which you propose to produce in answer to it. Herein does it differs materially from the plaintiff's opening, for whereas *his* Counsel properly confines himself to a lucid and temperate statement of the facts, reserving commentary for his reply, the Defendant's Counsel must perform the double duty and combine the spirit of a reply with the calmness and clearness of an opening. It is his *single* opportunity for addressing the Jury, and he must use it to travel over the whole case, with comment, not only upon that which has been proved, but also upon that which yet remains to be proved, and which may or may not answer to his anticipations.

Hence the difficulty of a defence. It is usually said that a reply is the test of ability; and so it is, *in debate*. But the saying has been inconsiderately extended to forensic oratory, in which the circumstances are very different. In debate, there is no necessity for anticipating the production of facts, which may not be proved after all, and dealing with them as if proved. To answer the argument on the other side, and urge his own reasons, are all that devolves upon the debater. But, at the Bar, the Counsel for the Defendant must do all that the debater is required to do, with the *additional difficulty* that he must state a case that will be an answer, and yet must state it so that a failure in proof of parts of it shall not be destructive to the whole; for one of the first lessons of experience in Advocacy is the little reliance to be placed upon *instructions*, not from any fault of the Attorney, but because witnesses, from many motives, are wont to make to the Attorney in his office a statement very different from that which they will venture, under the sanction of an oath, with a cross-examination in prospect, and with the eyes of the public upon them.

As a *general* rule it will be desirable to treat your subject in its *natural* order, that is to say, in the order in which it has been already presented to the minds of the Jury, unless some special reasons exist for dealing with it otherwise, some of which will be suggested presently. Here, as on all occasions in the exercise of his art, the Advocate should remember that he is addressing minds of

whom the majority are certainly inferior to his own in capacity, in subtlety, in quickness of apprehension, in nimbleness of thought and reasoning power—minds neither so well informed nor so skilful. He must adapt *his* ideas to *their* perceptions, mould *his* words to *their* knowledge, so present *his* thoughts to them that *they* may comprehend his meaning. The first condition of this self-adaptation is to understand thoroughly how such minds think. As this is the first occasion for reference to the subject,—for the opening speech deals with the case as strange to the Jury, and, therefore, the Advocate may follow almost his own will in submitting it to them, whereas the speech for the defence deals with a story already imparted to the Jury,—it will be as well to pause at this place to give it consideration.

Memory is association. You recall one fact by recalling some other that was connected with it. The associations differ in different persons,—words with some, places with others, sounds and sights with many, being the readiest and surest media for recollection. But there are few whose memories will not be best revived by recalling events in the order of their occurrence, or rather in the order in which they were presented to them originally ; with many it is the *only* form of memory. To take up a story irregularly, a bit here and a bit there, beginning in the middle of it, and skipping about from part to part, without reference to this *natural* order of the memory of your audience, would be merely to throw all minds among them

not as agile as your own into hopeless perplexity, and disable them entirely from comprehending your argument. The more probable effect will be, that, after shortly listening to you, and finding only an unintelligible maze, they will abandon the attempt altogether, and cease to hear, or at least resign even an effort to follow you. Let such a feeling once prevail, and your cause is lost, so far as it depends upon *your* eloquence.

Bear, then, this in mind, when you rise to open a defence at *Nisi Prius*, that you are about to comment upon a story already known to the jury; that it is your business to convince them that this story is not credible, by reason either of its own intrinsic improbabilities, or of the insufficiency of the testimony by which it was supported, or of the little faith due to the witnesses, or of the contradictions which you purpose to produce. In order to remove the impressions made upon their minds by that story, you must ask them to review it with you, and to do this you must recall it to them; and, as we have sought to show you, it can be best recalled in the order in which it was imparted to them.

Then occurs another question, upon which there is some difference of opinion even among experienced Advocates, namely, if it is more prudent to recall *the whole* of your adversary's case, its strongest as well as its weakest parts, that which you cannot answer as well as that you can; or, if it is wiser to pass over that which tells against you, and to dwell exclusively on that which you can meet. On the one hand it is said

that, by reviewing the strong points, and leaving them unassailed, you not only recall what may have been unnoticed, but you give them double significance by the confession of their strength implied in the inability to answer them. On the other hand, it is argued that, not to notice them at all is to admit them to be both unanswerable and destructive, and thus to *concede* a victory.

This is a dilemma of such frequent occurrence to the Advocate for the defence, that we should have been very glad if we could have discovered any rules for guidance in the choice. But we have endeavoured in vain to do so. Even after the experiment has been made, and with reference to the results of actual experience, we are unable to say which course has the balance of reason or the proofs of practice to recommend it. Much must depend upon the particular circumstances of the case, upon the impression apparently made upon the Jury, upon the nature and worth of the answer you are about to put in. If you have reason to believe that the Jury did not see all the value of the evidence you cannot disturb, it will obviously be prudent not to give it additional importance in their eyes by reviving it. But if the Jury do appear to have been much impressed by it, and likely to have their judgments swayed by it, you cannot do harm by repeating it; on the contrary, by linking it skilfully with the other portions of the evidence, which you *can* answer, you may, to some extent, shake its influence also: at all events, by boldly meeting it and even putting it forward pro-

minently, making a virtue of the necessity, you may not improbably obtain this advantage, that the Jury will say, "These facts cannot be so important as we thought, or the Counsel would not have so talked about them." So infinitely small are the reasons that sway verdicts, that even this sometimes would give a chance, which would be annihilated by the opposite remark—"He never said a word about that, because he *could* not."

But whether you do or do not determine to recall the whole case, a great deal of ingenuity may be employed, and will be requisite, in dealing with the evidence, so to treat it as to throw into shade the stronger parts, and bring out prominently its weaknesses and deficiencies.

As a general rule, it will be the more prudent course to *begin* with a review of the case as disclosed by the plaintiff, and *then* to state your own; but to this there will be exceptions under special circumstances, some of which we will notice presently. Take the story as it was told, not strictly observing the order of witnesses, but rather the order of time. A favourite and often very effective opening of a defence is an allusion to the highly-coloured assertions of the Counsel for the plaintiff as compared with his proofs; for seldom, indeed, does the sifted evidence quite fulfil the promise of the opening. Reminding the Jury of this, you disturb their confidence in the case already submitted to them, and you conciliate their good will to give you, who appear as an injured party, at least a fair hearing. Then travel carefully through the case, *restating it*

with your own comments, and according to your own view of it, thus presenting it under a different aspect to their minds. Take care that no weak part in it escapes your notice. Point out its shortcomings. Show not only the worthlessness of what is proved, but how much more *might* and *should* have been proved. Of nothing does a skilful Advocate take more advantage than of *omissions* of evidence, and nothing is more telling with a Jury to the disadvantage of the party so complained of; a motive for the withholding of the witness is always, and not unreasonably, suspected, and of that suspicion it is permissible to you to avail yourself. Then you must show, if you can, that the evidence upon which you are commenting does not bear the construction intended to be put upon it, or that it is inconsistent with itself, or with other testimony, or that the witness is unworthy of credit, or any other explanation of it that may occur to you.

But observe that, in the performance of this portion of your task, great caution will be necessary on your part to proceed upon substantial grounds, and only to put forward objections that have some show of reason and good sense in them. Criticism that is obviously frivolous will recoil upon yourself and damage you much more than your adversary. It is far better to leave the point untouched than to handle it inefficiently, for you but revive it in the memories of the Jury, and make it appear to them doubly important by your vain and weak endeavour to depreciate it. Remember this,

also, that juries do not understand very nice distinctions and refined arguments: they usually take broad views of a case, and you should endeavour, as much as possible, to meet it after *their* fashion, looking at it *broadly*, dealing with its most prominent features, attacking *obvious* defects, and treating it rather as a matter of common sense than of subtlety. If you *can* thus deal with it, by an appeal to their common sense, and it offers material for you to make its insufficiency plain to ordinary minds, be careful not to quit these, its broad and obvious features, for those more refined and delicate distinctions and arguments, which are intelligible only to an intellect as refined and practised as your own in the discernment of minute resemblances and differences. You will but divert their attention from that which they *do* comprehend to that which they *cannot*, and the advantage you have gained by the one you will not improbably lose by the other. The jury will perhaps forget what you have *done*, and remember only what you *failed* to do; the confusion of the latter will dim in their minds the clear memory of the former.

There is another very important rule to be observed, especially where you are dealing with a common jury, and that is, not to perplex them with *too many defences*. Even if you have many answers, it will be your truest policy to take the strongest and best, and rely upon that, or, at most, upon two or three, if they be *very* conclusive. But let it be an inflexible rule with you *never* to



attempt to back up a strong and palpable answer with weak and subtle ones. Once in a thousand times you *may* lose a cause by omitting to bring forward some other weak defence, after having thrown yourself upon your strong one; but for once that this is likely to happen, you will twenty times lose the verdict your strong defence would have secured, had you not weakened it by tacking to it some other more refined and, therefore, less intelligible one, thus, instead of imparting strength to the latter, infecting the former with its own weakness.

The art of a defence consists in battering down your adversary's case and erecting your own upon its ruins. This shows you the proper order of your strategy. You must first attack the case on the other side, and shake it to its foundations, before you attempt to lay the foundations of your own. Yet, apparently obvious as is this policy of a defence, how often is it neglected; and the listener in our Courts will hear the attack and the defence, the facts that have been asserted, and those that are to be proved, mingled in the speech, to the detriment of both, and to the perplexity of the Jury. Pray you avoid it.

Spare no pains for the weakening of your adversary's case by making plain to the Jury every flaw in it your ingenuity can find. *Never* neglect *this* portion of the duties of a defence, for you know not what may be its value,—if it may not be your sole reliance at last. *This*, at least, is yours—of such advantage as can be had from it you are

certain; nothing can deprive you of *that*. But your own case, however apparently strong, is never *secure* until it is proved; it may break down at the last from circumstances you could not anticipate nor control, and then your only hope will rest upon the damage that has been done to the case of the plaintiff. Remember that it is upon the other side that the *onus* of proof usually lies. It is for the plaintiff to make out his case to the satisfaction of the Jury, and if he fails to do this, even although you may be equally unable to prove what you had expected to prove, still you will be entitled to the verdict. Therefore it is that a sagacious Advocate always, in defences, throws his whole strength into the attack, and permits no weak point in the sum, or in the *details*, of proof to escape from his criticism. He will labour at this, while often he will pass lightly over the evidence he proposes to produce on his own part, leaving the latter to tell its own tale, if it is strong, and covering its defects, if it is weak.

In commenting upon evidence, two topics will present themselves. You may criticise either the evidence itself, or the witnesses, or, more usually, both,—for the testimony of a witness whose demeanour justifies reproach will usually require to be sifted with great care.

You may take the case either in the order in which the witnesses were examined, or in that of time, according to the story. The former will be the most convenient course for you, because you have your notes so arranged upon your brief; but

the latter is, perhaps, the most intelligible arrangement for a Jury. You will be guided by circumstances in your choice, each case having its own considerations in this respect, which no general rule could anticipate.

If you prefer the order of *witnesses* for the order of your commentary, it will be desirable to begin with a short outline of the whole case, as professed to be proved by the plaintiff, for the purpose of recalling and fixing in the minds of the Jury the points which it is your intention to assail, putting *them* the most prominently forward. That done, you remind the Jury that *this* was the case which the plaintiff had proposed to set up, upon which he relies for their verdict; you will now show them how he has failed to prove it, that his witnesses are not to be relied upon, and that their evidence, even if reliable, is inconclusive.

And *to do* this is now your duty.

You begin with the first *witness* whose testimony you desire to shake. You point out to the Jury whatever there was in the substance of his story, in his manner, in particular parts of his evidence, that should induce them to attach no weight to his testimony. In commenting upon him, as in his cross-examination, it is not necessary to this end that you should question his integrity, or charge him with *wilful* perversion or concealment of the truth. It will be more prudent, as well as more proper, in every case, save where you are *satisfied* that there has been *wilful* perjury, to give the witness credit for honest *intentions*, but to

show from his testimony, or from the manner in which he has given it, or from both, that he is *mistaken*, that his means of knowledge were imperfect, or his senses deceived, or his memory treacherous. The *manner* from which you argue such a conclusion is not difficult to be understood, though difficult to be described. Hesitation, undecided answers, retracting, saying and unsaying, contradictory assertions, are arguments for uncertain observation or imperfect memory, and you must not omit to impress them upon the Jury by repetition of the witness's very words, and by description of the dubious manner in which they were uttered. Here it is that you may fairly and very advantageously employ such talent as you may possess for wit and humour. If the witness has fairly exposed himself to ridicule, it is permissible for you to avail yourself of it for the sifting of his testimony, of whose worth a just judgment can rarely be found without taking into account the *peculiarities* of the witness,—whether, from his characteristics, he is a person competent to observe keenly and remember accurately.

At the same time you must bear in mind that there is a limit to this license. You have *no right*, by misrepresentation or exaggeration, to subject a witness to *ridicule*. You must not *caricature* him or his sayings, much less may you *wantonly* wound his *reputation* by assailing his veracity or his sagacity. The very position you occupy, having yourself entire license of speech, while he is not permitted to answer or retort, should incline you

rather to forbearance, as you would refrain from striking an enemy whose arms are bound. Before you make a witness the object of ridicule or reproof, be assured that he has fully deserved it by his own folly.

With these limitations, deal with him fearlessly, according to his deserts. Be no respecter of persons, but subject all equally to unsparing criticism, however high or low their station. The *Advocate* sees and knows only the *Witness*. He recognises no other personality; he considers him in no other capacity; and in *that* one all men are equal. The testimony of the Peer and of the Peasant must be sifted with the same care, commented upon with the same freedom—its shortcomings proclaimed with the same measure of indignation, or ridicule, or complaint, and with the same manner of exposition. The observance of the first rule, *never* so to treat *any* witness without good cause, will enable you faithfully to discharge the duty indicated by the second rule, of dealing with all witnesses equally, whatever their difference of rank; for, if it be well deserved, only credit can come to you from the free and fearless exercise of your ability. Thus it is in this, as it will be found in the whole conduct of life—that adherence to the strict line of duty in one thing facilitates the performance of our duties in all other things.

In dealing with the *evidence* of the witnesses, your sagacity will be exercised in detecting and exposing contradictions, improbabilities, and statements at variance with the evidence of other wit-

nesses. No portion of the duties of the Advocate opening a defence are so effective as this. Criticism on *the manner* of a witness may amuse the Jury, and induce them to listen to you, but it rarely influences their *opinion*. It is otherwise with comments upon the evidence that show it to be unsound and insufficient. Nothing so seizes the minds of the class of persons who usually constitute common juries as *contradictory* evidence. They cannot follow a subtle argument, but they can thoroughly comprehend a plain palpable fact, and it always makes a profound impression upon them. Persons accustomed *to think* know how frequently circumstances the most contradictory in appearance can be reconciled in fact, and they do not reject a story merely because it is not entirely self-consistent; but with minds less trained to reflection, the presence of two statements, both of which cannot be true, almost invariably produces an impression that both are false, and an inclination to reject a case that has failed *in part*, even although that part may be comparatively immaterial.

For the same reason you should not be satisfied with making manifest the worthlessness of the testimony in some important parts; let no one weak portion of it escape exposure, howsoever unimportant. You cannot tell which may most strike the minds of the Jury; and of this you may be certain, that an *accumulation* of contradictions and defects will increase the chance of convincing them in almost geometrical ratio. You cannot be sure when the process is complete; it may be the

last and the least of the flaws that may determine their judgments.

Above all, dwell with emphasis upon the contradictions that may have been given to the witness you are criticising by the testimony of other witnesses. Unreasonable and unjust though the maxim is, that a party shall not discredit nor contradict his own witness, still it is the law, as laid down by the Courts, and you may seize upon unanswered statements of any witness on the other side to show how discordant they are with the evidence of others of its witnesses. The effect of this is not merely to destroy the confidence of the Jury in both of those in whom the discrepancies appear, and to shake their whole testimony, but to throw a shade of suspicion upon the character of the entire case which has been *so* supported.

But if you are sincerely convinced that the witness has been guilty of *wilful falsehood*, if there is *proof* of it, such as no charitable interpretation can otherwise explain, your duty is clear. Spare him not. Let your tongue give expression to the honest indignation you feel, assured that it will find an echo in the heart of every honest man who hears you. Not for your particular case only, but for the interests of justice, for the protection of the public, for the honour of the Courts, it is necessary that this most odious and dangerous crime should not pass unreprieved, but that the detected perjurer should quit the Court with the brand upon him. It is this terrible consequence of such a charge that ought to make Advocates

more chary than sometimes we see them of affixing it to a witness. Be it your care to avoid the risk of doing an irreparable wrong, by studiously avoiding, either to charge openly, or to insinuate a charge, of perjury against any witness, unless there is such *proof* of it as the infirmity of the senses or of the memory cannot explain away.

In this manner deal with each witness in succession, until you have exhausted your commentary on the plaintiff's case.

You will now proceed to open your defence; to state what is the answer you are prepared to put in to so much of the plaintiff's case as requires an answer. In your commentary upon it you have shown what of it was untenable, what unproved—what had, in fact, answered itself. You have now to show the means by which you propose to defeat by evidence that which you were unable to beat down by argument.

Here, also, your task is more delicate and difficult than that of the Counsel who opens a plaintiff's case. Great caution is required; some tact is to be exercised; your judgment must be ever on the watch to control your tongue. You must be very careful to state no more than you are confident of being able to prove: you must avoid *unnecessary proofs*—by which we mean, the *proving of that which is not denied*, or not relevant, or which is already established by the witnesses on the other side; for an unnecessary witness is always dangerous; once in the box he is equally the property of your opponent, and you cannot know what



damaging facts may be obtained from him in cross-examination. If, on the other hand, you refer to him in your speech, and afterwards omit to call him, you expose yourself to severe and just animadversion in the reply, and the Jury will be asked to put the worst construction upon this discrepancy between promise and performance. In stating your defence, *if it is a strong one*, it is desirable briefly to recall the parts of the plaintiff's case to which it is an answer, by which you impress it the more forcibly upon the Jury; and this should be done, not by stating all of the plaintiff's case at once, but each part of it that you refute, in succession, with the answer following immediately upon the fact; for Juries cannot pursue a train of argument, nor even carry in their minds many successive facts, so as to apply a succession of other facts to those which have preceded. It is your business, and it should be your particular care, to make the application for them, and by putting the assertion and the answer before your audience in immediate sequence, to associate in *their* minds and memories your opponent's facts, and your contradictions of them.

And your *statement of facts*—that is, the *opening* of your defence, should be, like all statements of a case—plain, perspicuous, and unimpassioned, but also pictorial and dramatic. There must be no effort to be oratorical, no flights of eloquence or poetry, no appeal to the passions,—only mere narrative, told in the language most intelligible to unlearned ears, in the purest Saxon you can muster,

delivered in a conversational tone, and in the manner of one who is telling a story. That is what in truth you are now doing, and nothing more. You want to convey to the minds of the Jury, and to *fix* there in distinct form and vivid hue, the places, the persons, and the incidents you are narrating. To accomplish this, your words must be pictures; your recitals of what men do and say must be after the *manner* in which men act and talk, imparting to your speech reality and life, wanting which you cannot long command the attention of your audience.

Having concluded the statement of *your* case, you will then proceed to make application of it to the case of the plaintiff, showing how triumphantly it will answer this point, how it will demolish that one, how little remains unshaken, and how worthless that little is. *Here* it is permissible to you to be somewhat discursive; to call in the aid of any arts of oratory that may be apt to the occasion, for the purpose of yet more damaging the case of your opponent, or invoking a favourable opinion for your own; and following the sober narrative of the facts, eloquence, or wit, if justified by the subject, will now come with the advantageous effect of contrast, and please and attract the more that it will not be disapproved by the sense of propriety and fitness that is common to all men, and much more possessed by Juries than Advocates are wont to believe.

Again we must remind you that this is your *only speech*: you will not enjoy another opportunity of addressing the Jury; you must say all that

you desire to say now, or never. A defence partakes of the double character of an opening and a reply; it is, in fact, *both*, and must combine the art of both, and be guided by the rules that govern both. Hence its difficulties; of which not the least you will feel is to decide the best manner of dealing with so much of the plaintiff's case as you are able to answer only partially and imperfectly. This it is that will test your tact and prove your discretion. The parts to which you have no answer you will of course pass unnoticed. But the most cautious discretion is requisite to determine if, and how, you shall deal with facts to which you have *not* a satisfactory answer. It is impossible to suggest any rule for your guidance in these circumstances. You must rely upon your own tact at the moment, to determine you how to treat them. Your ingenuity must be invoked to give them their best aspect. This is an art which experience only can teach, and we cannot do more than remind you of the existence of these difficulties, and of the capacities that will be required of you to meet and overcome them. You can only anticipate them by cultivating those capacities, so that, when the moment for action comes, they may be competent to the task that will be imposed upon them.

Having concluded your speech, you proceed to call your witnesses, observing the same rules as have been already given for the production of the plaintiff's evidence. You and your Junior conduct the examination-in-chief by turns, the right of *re-examination* being yours, if you are pleased to

exercise it; and whether you will do so or not will depend upon your confidence in your Junior, and the importance of the witness. Where special care and skill are required in order to set up again a witness who has been damaged by cross-examination, the duty should be undertaken by yourself. But if there is nothing demanding more than ordinary capacity, it is a graceful concession to a Junior to invite him to the work, while you watch his proceeding, and kindly suggest any thing that might have escaped his less experienced eye. Such considerate politeness is always appreciated by the object of it, and insures even for yourself the goodwill of the Court and of the Profession, by whom it is seen and applauded. It should also be observed that, in the re-examination of witnesses for the defence, there is less occasion for the Leader's personal conducting of it than in cross-examination, or even in the *re*-examination of the witnesses for the plaintiff; because, in both of these latter cases, the Leader has to comment in a speech upon the testimony, which it is therefore desirable for him to direct to his own purpose; whereas, in the former case, no further opportunity will offer for remarking upon it; nothing that the witnesses say will interfere with what is further to be said.

Some cautions, however, are to be observed in the examination of witnesses for the defence, according to the nature of that defence.

*Defences* will be found, for the most part, to fall under one of *two* grand divisions. Either they go to *contradict* the case of the plaintiff, or they pro-

ceed upon what, in legal phrase, is termed *confession and avoidance*. The first kind of defence consists in a simple contradiction of the facts asserted on the other side, by calling witnesses to prove that they are *not true*. It is the most direct and obvious, but also the most difficult and dangerous, defence, for it stakes the issue of the cause upon a conflict of credibility; and when Juries are required to weigh the worth of opposing testimony, it is not always that the right triumphs, for it is a task that tries the strongest intellect, and which such unpractised minds as those in the Jury-box are not likely to perform with accuracy. The defence by *confession and avoidance* is the most frequent, the most effective, and also requires the most skill and caution on the part of the Advocate. It consists in admitting, or rather in not disputing, the facts proved by the plaintiff, but proving other facts that deprive them of their significance, or what is termed in common parlance, *explaining them away*,—a phrase for which we have sought in vain an equally significant equivalent. These two kinds of defences may be thus illustrated. The plaintiff charges the defendant with having bought of him certain goods on a certain day. The defendant does not deny the purchase, but he proves that the goods were worthless. Or, the plaintiff charges the defendant with trespassing on his land. The defendant admits that he went across it, but claims a right of way there. Instances in abundance will readily occur to you; these will suffice to show you the meaning of the technical phrase that has been employed

to describe the kind of defence most frequently resorted to.

You will, of course, have well weighed, before you come into Court, the line of defence to be adopted, and your speech and your examination of the witnesses will be directed to sustain it. If you are a Junior, it should be your care to listen attentively to the speech of your Leader, in order to learn what is the defence he proposes to offer, that in your examination of the witnesses that fall to your lot you may assist his object. And, whether Leader or Junior, in conducting such examination it is of very great importance to understand thoroughly what the line of defence is, that you may educe whatever is requisite to support it, and shut out whatever may be damaging to it. Disregard of this often produces fatal results; and it is not uncommon to see a Junior, by some unlucky questions, destroying in a moment an edifice which his Leader has, with consummate ingenuity, constructed in his speech, but which an answer, inconsiderately elicited from a witness, has blown to the winds.

In this, again, the difficulties of a defence are greater than those of the plaintiff's case,—that the latter can almost always be prepared *out of court*. The facts to be proved are known, and there is little chance of a surprise by something not anticipated. It is otherwise with the defence. *Here* it continually occurs that unexpected incidents in the course of the trial demand a modification of the intended defence, or even an entire change of

position; and thus a different argument and different examination of witnesses must be adopted from that which the brief contains, or which had been resolved upon in consultation. These are circumstances that claim all your skill and caution, all your readiness of invention and soundness of judgment, to enable you to come to an instant decision and proceed without perplexity upon the new track.

In such a case, it is more than ever incumbent upon the Junior to keep his attention fixed upon the speech of his Leader, that he may learn precisely what is the defence to be resorted to, in order to adapt to it his own subsequent examinations of the witnesses. And here we may give you another hint for your observance in your capacity as Junior. While your Leader in his speech is commenting upon the evidence, turn to the pages of your brief, on which you have taken notes of the evidence, and let your eye follow the notes as your ear pursues his commentary, so that, if he should be at any time in want of any fact or expression used by the witness, you may be enabled instantly to supply it.

These hints are all that occur to us as useful for the conduct of a *defence* at Nisi Prius.

## XXXVII.

### THE REPLY.

THE Reply is usually deemed to be the test of an orator's ability, and his most difficult achievement. It may rightly be so in *debate*, because the Reply is the only portion of it which we are sure could not have been prepared, and in which we know that the speaker gives expression only to his own thoughts, in his own words, thus enabling us to measure his capacities. But, at the Bar, it is dangerous to come prepared with an opening speech, still more dangerous to anticipate a defence, and therefore the tact and skill required for a defence are even greater than those demanded for a Reply. In a defence, half the case is conjectural; in reply, all is known, and the Advocate may deal with it after his own fashion, without fear of contradiction from forthcoming evidence. Hence the wide scope which the Reply affords for the exercise of all the powers of the intellect, and which really makes



it a less difficult achievement than the other oratorical duties of an Advocate that compel the speaker to caution and restraint, the curb in oratory being a great deal more trying to the speaker's intellect than unlicensed liberty.

The Reply is *always* the duty of the Leader, and it is to enable him to mould the case, so that he may maintain a consistent argument, that to him is also intrusted the task of cross-examining the witnesses for the defence.

No rules can be suggested for regulating a reply, because the utmost licence is given to you, alike in respect of subject and of treatment. You reply upon *the whole case*. You may comment upon every portion of it, repeat your own evidence, review that of the defendant, compare the one with the other, point out the relative strength or weakness of either, show inconsistencies, criticise the witnesses, confirm the weak, denounce the false, vindicate the true, answer the arguments of your opponent, elaborate your own, invoke the aid of wit or wisdom, humour or pathos, as it serves your purpose. The wide range thus given to the play of your intellect is to yourself one of the most delightful exercises of your mind, and if you have a quick and various intelligence, prompt to deal sensibly with divers topics, you cannot fail to arrest the attention of your audience, and dull indeed must be the Jury that will deny to you a patient hearing.

Hence the extreme importance of the *right to reply*. Doubtless you have many times read

in the Reports, or witnessed in the Courts, severe contests upon the claim of *right to begin*, and possibly you may have wondered what great advantage, worth so much talk, could arise to a party from the mere permission to state his case *first*. But the battle is not really for the right to *begin*, but for the right of *reply*, which is consequent upon the right to begin. The general rule is briefly stated: that party begins with whom rests *the affirmative of the issue*; but, as with all general rules, the application of it to particular cases often produces great and reasonable doubts where the affirmative *does* lie.

The value of a reply can scarcely be over-estimated. In the hands of a skilful Advocate, scarcely any case is hopeless where a reply is given to him. Instances of its importance must continually occur to all who have had experience in our Courts. How often have we seen a Jury intimate that they had made up their minds, but, being told by the Judge that it was their duty to hear the whole case, reluctantly and sullenly at first submitting to the Advocate's address, then listening of good-will, and ultimately delivering a verdict directly opposed to that upon which their minds had been made up! Remember that the Reply is *the last word*, and we all know the proverbial worth of *that*. Arguments, however fallacious, must pass unanswered, save by the Judge in summing up, and the evidence may be so skilfully disposed as to give to it such aspects as the Advocate desires. He may batter down his adversary's case, and there is none to set it up again,

or display his own in glowing colours, and it cannot be stript of its hues, however shadowy or deceptive.

You will now understand why it is that the Counsel for the Defence should always exercise such care in resolving whether to call witnesses. If he does not do so, the case ends there, and the defence has the benefit of the last word. As a general rule, a cautious Advocate will not call witnesses for the defence, unless they are absolutely required to meet the case established by the Plaintiff. If the Plaintiff has failed to make out his case, it is always better to leave it so, with the impression of the speech for the defence full in the minds of the Jury, than to hazard a reply, which can never be given without danger.

This difficulty however occurs more frequently in the Criminal Courts, in treating of which we shall have occasion to return to the topic, and adduce the reasons for the rule we are recommending. It suffices merely to hint it here.

But even a reply should be governed by some regard to method. No such orderly array is required as in the Opening Speech, which is a *narrative* of facts, or in the Defence, which is partly argument and partly narrative. But it should not be desultory and unmethodical. It should be artistically arranged, and not a mere string of disconnected sentences. Remember, that it ought to be a continuous and complete *argument*. However sparkling with wit, or glowing with elegance, however you may seem to play with your theme, and to flit

away on this side or on that in pursuit of illustrations, or even for the indulgence of your fancy, you must never lose the *thread* of your discourse; an under current of argument must run through every part of it, and all must be directed and actually tend to the conclusion which you desire that the Jury shall draw from it. A formal logical discourse would be disagreeable and repulsive; but if the flowers with which you adorn it be stript off, there beneath them the logic should be found that gives pith and substance to the whole.

Remember what is your purpose—to answer by *argument* the case that has been made out for the defence by the *evidence*. That is the principal object of a reply; the others are only secondary. You have also to answer the arguments of the Counsel for the Defence, but these are of small moment compared with the duty of meeting and explaining away his *facts*, for *arguments* are but dimly understood by the majority of jurymen, and by almost all of them are but feebly remembered; while facts make their way into the minds of the dullest, and remain there. It will therefore be your most prudent course, upon the principle of reserving your most important points to the last, that they may leave the most vivid impression, to begin with an answer to the *arguments* of the other side, and then to proceed to review *the facts* of the case as proved by yourself, dwelling emphatically upon such as have been left unanswered by the defence. This serves to refresh the minds of the Jury upon the strong points of your own case, and

it will also enable them more readily to follow you in your examination of the case submitted for the defence. Good generalship and great caution are required in this, so to handle your own case as not to bring into prominence its weaknesses and defects, and to give strength and symmetry to its best points by your manner of recalling them. But that manner cannot be conveyed by rule; it can only be taught by experience, combined with a quick perception, and a power of ready adaptation to the demands of the moment.

This done, you proceed to comment upon the evidence for the defence, and to that the same instructions are applicable as have been already submitted to you for your guidance in the speech that opens the defence, for your business in either is the same in this particular, namely, to show that the evidence is not credible, or, if credible, that it does not support the case. But you have something more to do than mere criticism on the evidence of the defendant; you must compare it with your own case, and show how and where it is weak, and what it has failed to shake, and what it has left unassailed. In the Defence, your only duty was to criticise the case of the plaintiff; you could scarcely venture to compare it with your own, because yours remained as yet unproved, you could only speak of it in anticipation, and as you knew not how it might fail in the witness box, it would have been dangerous to treat it as proved, and dwell upon it by comparisons with that which was actually proved. But in Reply the best and the worst are known; there is

nothing to fear from failure of proof; the range of the Advocate's review is only limited by the legitimate boundaries of the whole case; he will set the one fact against the other, and draw such a comparison in his own favour as the contrast will permit, and with the results of that comparison, carefully summed up and put to the Jury in the clearest language, he will close his reply.

Observe, however, that this is but an outline of *the form* of a reply; as a general rule, it would be most prudent to adopt this arrangement of your theme, as being the natural order in which it would recur to the thoughts of the Jury. For its details, for the ornaments with which you should surround it, and almost conceal its shape, you can be indebted only to your own skill and accomplishments exercised at the moment. There is scarcely one of the graces of oratory which you may not now advantageously employ, provided it be in accord with the subject. And this suggests to us another hint, not out of place here. Let your treatment of every case be *consistent with itself*. Let the tone, the manner of handling, and the language, be in harmony with the *character* of the case. If a fit theme for light and jesting treatment, so treat it; if for pathos, be pathetic; if it be a grave matter, deal with it gravely; if shameless, severely. But do not endeavour to mingle all humours, nor approach it in an unsuitable mood. Such bad taste is far more offensive to an audience than many positive faults. And yet it is not an uncommon spectacle in our

Courts, especially among the inexperienced, or those who are thinking more of the display of their own wit, or eloquence, than of the interest of their clients. Above all, be fastidious as to the introduction of *flights* of oratory; be as little *poetical* as possible, and indulge in no “fine phrensies.” Courts of Justice are places of business, where men resort for the despatch of earnest and serious affairs, and not for empty declamation and debating-club talk. The occasions are extremely rare that permit of anything more than a sensible plain-spoken address to a Jury;—enlivened, if you please, by a spice of humour, or a dash or two of wit, fairly suggested by some person or event on which you are required to comment in due course;—but let nothing tempt you to be *eloquent* about mere matters of business—to rhapsodise upon a tradesman’s bill, or to scatter the flowers of oratory over a right of way.







